TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 146

HENRY WILSON, F. A. WILSON, W. T. WILSON, ET AL., PETITIONERS,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, STEAMSHIP "NEWPORT," HER ENGINES, ETC.; J. McKINNON, MASTER, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 19, 1926

CERTIORARI GRANTED JANUARY 10, 1927

No. 173

PACIFIC MAIL STEAMSHIP COMPANY, CLAIMANT OF THE STEAMSHIP "NEWPORT," HER ENGINES, ETC., AND J. McKINNON, MASTER OF SAID VESSEL, PETITIONERS,

vs.

HENRY WILSON, F. A. WILSON, W. T. WILSON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 28, 1927

CERTIORARI GRANTED MARCH 14, 1927

(32,311, 32,430)

(32,311, 32,430)

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vs.

PACIFIC MAIL STEAMSHIP COMPANY, STEAMSHIP "NEWPORT," HER ENGINES, ETC.; J. McKINNON, MASTER, ETC.

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INDEX

	Page
Record from the district court of the United States, southern California	1
Caption	1*a*

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 14, 1927

	Page
Docket entries	1*b*
Libel	2
Claim of Pacific Mail Steamship Company	12
Order extending time	14
Stipulation re amendment of libel	15
Amended libel	16
Cross-libel	20
Answer to amended libel	26
Answer to cross-libel	36
Argument and submission	50
Order to prepare decree	53
Interlocutory decree and order referring cause to commissioner	53
Final decree	55
Memorandum opinion, McCormick, J	63
Statement of evidence	69
Argument and counsel	69
Testimony of James Hayes	84
George McKinnon	104
C. A. Heygendorff	127
Fred Warner	133
Albert Winslow	138
John O. Blanchfield	142
Stipulation re testimony	146
Testimony of John McKeown	147
Charles S. Semsen	149
Karl Rohberg	178
Notary's certificate	215
Assignments of error	217
Notice of appeal	221
Stipulations re transcript of record	222
Bond on appeal	225
Praecipe for transcript of record	228
Clerk's certificate	231
Proceedings in the United States circuit court of appeals, ninth circuit	237
Argument and submission	237
Order to file opinion and decree	238
Opinion, Hunt, J	239
Decree	249
Clerk's certificate	251
Orders allowing certiorari	252

Names and Addresses of Attorneys.

For Appellants:

FARNHAM P. GRIFFITHS, Esq.,
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Balfour Building, San Francisco, Calif.

For Appellees:

ANDROS, HENGSTLER & DORR,
Kohl Building, San Francisco, Calif.

STATEMENT OF CLERK UNDER RULE 4.

(Title of Court and Cause)

No. 1202 Civil.

PARTIES

Libelants: HENRY WILSON, F. A. WILSON, W. T. WILSON, LUCY W. KENDALL, A. KENDALL, A. J. PATTERSON, JAS. PENNYCOCK, O. BERTELSEN, J. S. HUTCHINSON, E. C. HUTCHINSON, C. E. ALLEN, A. B. JOHNSON, KATIE M. JOHNSON, MARIETT JOHNSON, A. HANSEN, CLARA A. BUCHHOLZ, H. W. JACKSON, L. EVERDING, FRANK GRAHAM, MARGARET A. WILSON, Trustee, CARRIE E. WILSON, J. H. WILSON, MARGARET A. WILSON, WM. C. WILSON, JAMES GRAHAM, B. P. NELSON, KARL ROHBERG, CHARLES S. SEMSEN, JAMES HAYES, C. H. ANDERSON, HARRY WALTON, W. SAARIS, GUST ANDERSON, GUST SAARINEN, WM. R. REILLY, LOUIS NORLOFF, JOHN McDONALD, WILSON BANGAY, ROBERT WHITE, GEORGE DOLAN, JOHN LEWIS, SETT STRAND.

Respondents: STEAMSHIP "NEWPORT", her engines, boilers, tackle, etc., J. McKINNON, Master of said vessel, and PACIFIC MAIL STEAMSHIP COMPANY, a corporation, owner of said vessel.

Claimant: PACIFIC MAIL STEAMSHIP COMPANY, a corporation.

Cross-Libelant: PACIFIC MAIL STEAMSHIP COMPANY, a corporation.

Cross-Respondents: HENRY WILSON, F. A. WILSON, W. T. WILSON, LUCY W. KENDALL, A. KENDALL, A. J. PATTERSON, JAS. PENNYCOCK, O. BERTELSEN, J. S. HUTCHINSON, E. C. HUTCHINSON, C. E. ALLEN, A. B. JOHNSON, KATIE M. JOHNSON, MARIETT JOHNSON, A. HANSEN, CLARA A. BUCHHOLZ, H. W. JACKSON, L. EVERDING, FRANK GRAHAM, MARGARET A. WILSON, Trustee, CARRIE E. WILSON, J. H. WILSON, MARGARET A. WILSON, WM. C. WILSON, JAMES GRAHAM, and B. P. NELSON.

PROCTORS

For Appellees (Libelants and Cross-Respondents below): ANDROS, HENGSTLER & DORR and F. W. DORR, Esq.

Kohl Building, San Francisco, California.

For Appellants (Respondents, Claimant and Cross-Libelants below):

FARNHAM P. GRIFFITHS, Esq., McCUTCHEN, OLNEY, MANNON & GREENE,

Balfour Building, San Francisco, California.

PROCEEDINGS

FILINGS—PROCEEDINGS.

DATE			
Month,	Day,	Year	
Dec	8,	1922	Fld. libel. Fld. stip for costs. Ent. same. Fld. agreement for release bond. Fld. praec. Iss'd Monition & copy & citation & 2 copies,
"	9,	"	Fld. claim of Pacific Mail S. S. Co. Fld. stip for costs. Ent. E. R. B.

"	11,	"	Fld. bond & stip for release of Steamer "Newport" Ent. E. R. Bk.
"	11,	"	Fld Monition & ent. ret. E. R. B. Fld citation & ent. ret. E. R. B.
"	27,	"	Fld stip for reduction of release bond. Fld stip & Bond on release replacing release bond prev. fld. Ent. stip E. R. B. Fld ord cancel release bo prev fld. Ent. ord.
Jan.	8,	1923.	Ent proc on proclam in admr. by crier & ord gntg. clmt & respondent 30 das to plead.
Feb.	7,	"	Fld exceptions to libel.
"	9,	"	Fld. depos Jno. McKeown, Charles S. Semsen & Karl Rohberg for libellant.
Sep.	12,	"	Fld notice of hrg exceps to libel & interrogs. Set for 9/17/23
"	17	"	Ent. ord contin 1 wk on excepts to libel & Interrogs.
"	24	"	Ent. proc on withdrawal of excepts to libel & interrogs. & ord allowing 10 days to answer by consent of counsel.
Oct	15,	"	Fld. stip & ord re amendmt of libel & amended libel. Ent ord E. O. B.
"	20	"	Fld cross libel of Pacific Mail S. S. Co. Fld answer of claimant & cross libel to amended libel.
Nov.	26	"	Fld. answers to cross libel & answers of Pac. Mail S. S. Co. Wit. to interrogs. Fld. Stip for $10,000.00 se-

curity on cross libel signed by Judge Bledsoe, Ent. Stip.

Jan. 9, 1924 Ent cause on T. T. Cal. Jan term 1924.

" 14, " Ent. ord setting for hrg 4/16/24

Mar 5, " Fld notice mo for postponement trial for 3/10/24

" 10 " Ent. proc on mo to postpone date of trial & ord denying

" 28 " Ent ord vacating ord settg for hrg 4/16/24 & cont 5/5/24 for settg.

May 5, 1924. Ord settg for hrg 5/6/24

" 6, " Ent proc on hrg. Fld 6 libell exibs. Fld 2 resp. exibs. Sw 1 libell wits. Sw. 5 resp. Wits. Ent. ord submitting. before Judge Paul J. McCormick

Sept. 10 " Ent. ord decree be drawn for libellant & cross respondents pursuant to memo opinion filed this day. Fld memo opinion. Ord libellant prepare decree.

" 15 " Fld stip for ref to U. S. Comr Francis Krull, N. D. Calif.

" 15 " Ent ord, signing filing & entering decree referring to Francis Krull, Esq., U. S. Comr. to take testimony & ascertain amounts due libellants & to report same to this court. Fld decree.

Feb. 19 1925 Fld petn Pac. Mail S. S. Co., for rehrg or modification of interloc decree.

"	24	"	Fld brief in oppos petn. for rehrg.
Aug	24	"	" report of U. S. Comr Krull on ref to ascertain & report due libellants. Fld. 8 vol's testy taken before Comr. Fld. mo for permis to offer fur testy on behalf libel. Fld Ex #1 to 105 on such proc. & copy of letter from Comr. (in vault, off 419, on table)
"	26	"	Fld excepts resp & claimant to report Comr.
Nov.	11	"	Fld excepts libellants to report U. S. Comr.
Jan.	18	1926	Fld notice of hrg exceptions.
"	25	"	Ent. proc on hrg exceptions of claimant & respondent to Comm'r report & ord. submittg before Judge Jaul J. McCormick,
Feb	19	"	Fld & ent ord overruling excepts to Comrs report & approv report & ord for decree und rule #26.
Feb	26	1926	Fld supple report U. S. Comr on reference
Mar	10	"	Ent ord sgng, flg & entrg decree. Fld decree.
"	15	"	Fld memo libellants costs. Fld notice of taxed costs.
"	16	"	Costs taxed at $807.04; Dock & ent costs.
Apr	19	"	Fld notice of motion for ord fixing bond on appeal & ent proc on hearing motion & ord that on respondent giving an additional bond in $35,-

000.00 security will be sufficient on appeal. Fld ord staying execution to May 1, 1926.

" 19 " Fld 4 stips exec on decree & judgt be stayed 10 days from (1) 3/20/26 (2) 3/29/26 (3) 4/8/26 (4) 4/19/26

" 23 " Fld ord fxg amt. of supersedeas bond on appeal $35000

Apr. 28, 1926 Fld assign of errors of P. M. S. S. Co., Fld notice of appeal. Fld & Ent supersedeas Bond for $35000.00. Fld bond for costs on appeal. Fld prae for apostles on appeal. Fld stip re printing trans.

May 1, " Fld. reporters trans of testy on trial. Fld stip re bond on appeal with ord thereon.

" 4, " Fld notice of filing supersedeas bond and cost bond on appeal.

" 21, " Order signed by Judge James extending time to file record in C. C. A. to & including June 10th.

IN THE SOUTHERN DIVISION OF THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

IN ADMIRALTY.

——— oOo ———

HENRY WILSON, F. A. WILSON and W. T. WILSON, a co-partnership, doing business under the firm name and style of WILSON BROS. & CO., Libelants, vs. STEAMSHIP "NEWPORT", her engines, boilers, tackle, etc., J. McKINNON, Master of said vessel, and PACIFIC MAIL STEAMSHIP COMPANY, a corporation, owner of said vessel, Respondents.	No. LIBEL IN REM AND PERSONAM FOR DAMAGES IN COLLISION. $151,000.00.

——— oOo ———

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The libel of HENRY WILSON, F. A. WILSON and W. T. WILSON, a co-partnership, doing business under the firm name and style of WILSON BROS. & CO., suing in their own behalf as part owners of the steamship "Svea", and as managing owners of said steamship, in behalf of the other part owners of said vessel, and in behalf of the master, officers and crew of said ves-

sel, against the steamship "Newport", her engines, boilers, tackle, etc., and against J. McKinnon, master of said steamship "Newport", and against Pacific Mail Steamship Company, a corporation, owner of said steamship "Newport", and against all persons lawfully intervening for their interest in said steamship "Newport", in a cause of collision, civil and maritime, alleges as follows:

I.

That Henry Wilson, F. A. Wilson and W. T. Wilson, libelants herein, were, at all of the times herein mentioned, and now are, a co-partnership, doing business under the firm name and style of Wilson Bros. & Co., and were, at all of said times, and now are, part owners of the steamship "Svea", of 648 gross tons burden, or thereabouts, and of her engines, boilers, boats, tackle, apparel, furniture and appurtenances; and were, at all of said times, and now are, the managing owners of said steamship "Svea", her engines, boilers, boats, tackle, apparel, furniture and appurtenances, and are suing herein in their own behalf as part owners of said vessel, and as managing owners in behalf of the other part owners of said vessel, and in behalf of the master, officers and crew of said vessel.

II.

That the steamship "Newport", respondent herein, was at all of the times herein mentioned, and now is, an American vessel of 2643 gross tons burden, or thereabouts, and is now lying in the harbor of Los Angeles, within the Southern District of California, and within the jurisdiction of this Honorable Court.

III.

Upon information and belief, that J. McKinnon, respondent herein, was, at all of the times herein mentioned, and now is, master of said steamship "Newport"; and that Pacific Mail Steamship Company, a corporation, respondent herein, was, at all of said times, and now is, the owner of said steamship "Newport".

IV.

That heretofore, to-wit: on the 29th day of November, 1922, at about 9:53 A. M. on said day, while said steamship "Svea" was bound on a voyage from the port of Ventura, in the State of California, to the port of Aberdeen, in the State of Washington, and while off the coast of California, at a point about twelve (12) miles westerly from Point Buchon, said vessel was run into by said steamship "Newport"; that as a result of said collision said steamship "Svea" was so badly damaged that she filled with water and capsized before she could make port; and in so far as libelants are now informed is an almost total loss.

V.

That said steamship "Svea" was, at the time of said collision, and at all times prior thereto during said voyage, and at the commencement of said voyage, in all respects seaworthy, and properly and efficiently officered, manned, supplied, equipped and furnished, and well and sufficiently fitted and supplied with suitable engines, boilers, machinery, tackle, apparel, appliances and furniture, all in good order and condition, and suitable for the business and voyage in which she was engaged; that the owners of said steamship had at all of said times exercised due diligence to make said vessel in all

respects seaworthy, and properly and efficiently officered, manned, equipped, supplied and furnished, and well and sufficiently fitted and supplied with suitable engines, boilers, tackle, apparel, appliances and furniture.

VI.

That at the time of said collision the weather was fair and clear; that said steamship "Svea" was at said time, and had been for about thirty-eight (38) minutes prior thereto, proceeding on a course Northwest by North one half North magnetic, at a speed of about seven and one-half (7½) knots per hour; that said steamship "Newport" was proceeding on an East Southeasterly course, at a high rate of speed, and was at all of said times on the port bow of the "Svea", and at all of said times the "Svea" was on the starboard side of the "Newport"; that at all of said times said steamship "Svea" held her course and speed, and complied with all rules of navigation, and was at all of said times navigated with due caution and skill by the master and officers thereof; that said collision was not caused by any fault, negligence or want of due care on the part of libelants, or the master, or the officers, or crew of said steamship "Svea", or any of them.

VII.

Libelants allege that said collision and the consequent damages to said steamship "Svea", and to her owners, master, officers and crew, were entirely due to the fault of the respondents, and particularly those in charge of the navigation of said steamship "Newport", and that said vessel was at fault in the following, among other particulars:

FIRST: Upon information and belief, that said vessel did not have a proper or competent officer on watch

at the time of said collision, and immediately prior thereto.

SECOND: Upon information and belief, that said vessel did not have a proper or competent helmsman at the steering wheel of said vessel at the time of said collision, or immediately prior thereto.

THIRD: Upon information and belief, that said steamship "Newport" at, and immediately prior, to the time of said collision, did not have a proper and competent lookout on watch.

FOURTH: That said steamship "Newport" at, and immediately prior, to the time of said collision, was violating Article 19 of the International Rules for Preventing Collisions, in that said vessel having the steamship "Svea" on the starboard side of said steamship "Newport" did fail to keep out of the way of said steamship "Svea".

FIFTH: That said steamship "Newport" at, and immediately prior, to the time of said collision was violating Article 22 of said International Rules for Preventing Collisions, in that it failed to pass astern of said steamship "Svea".

SIXTH: That said steamship "Newport" at, and immediately prior, to the time of said collision was violating Article 23 of said International Rules for Preventing Collisions, in that while approaching said steamship "Svea", and while it was obliged by the said International Rules to keep out of the way of said steamship "Svea", it failed to slacken its speed, and did fail to stop, and did fail to reverse its engines.

SEVENTH: That said steamship "Newport" was negligent in other and further particulars, of which the libelants are not at present advised, but when so

advised will beg leave to offer proof of said negligent acts, and to amend their libel to conform with such facts.

VIII.

That after said collision the master of the steamship "Svea" signalled to the steamship "Newport" for assistance, but the master, or other person in charge of the steamship "Newport" failed and neglected to stay by the steamship "Svea" until said master, or other person had ascertained that said steamship "Svea" had no need of assistance, or further assistance, and failed and neglected to stay by said steamship "Svea" at all, and failed and neglected to render any assistance to said steamship "Svea", although the latter was in a badly damaged and sinking condition, and was in need of such assistance; and that the master, or other person in charge of said steamship "Newport", at the time of said collision, and at all times thereafter, failed and neglected to give to the master, or any other person in charge of the steamship "Svea", or to any other person on board said vessel, the name of the steamship "Newport", her port of registry, or the port or place to which she belonged, or the name of the port and place from which, and to which she was bound, or any of them,

Libelants further allege upon information and belief, that said steamship "Newport" could have stood by said steamship "Svea" after said collision without serious danger to said steamship "Newport", or to her crew, or to her passengers, and that there was no reasonable cause for such failure and neglect to stay by, or for the failure and neglect to render assistance, or for the failure and neglect to give the name of the vessel,

port of registry, or other information, as provided in the Act of Congress of September 4, 1890, 26 Stat. 425.

IX.

That by reason of said collision and the resulting damage to said steamship "Svea", and by reason of the loss of the clothing, personal effects, tools, utensils and navigational instruments of the master, officers and crew of said steamship "Svea", and on account of the expenses arising out of said collision, libelants have been damaged in a sum which they are at present unable to state with accuracy, but which upon information and belief, they aver will amount of upwards of One Hundred and Fifty-One Thousand ($151,000.00) Dollars, and that no part of said damage has been paid.

X.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelants pray that process in due form of law, according to the course of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue against the said steamship "Newport", her engines, boilers, boats, tackle, apparel, furniture and appurtenances, and that said J. McKinnon and Pacific Mail Steamship Company, a corporation, may be personally cited to appear and answer upon oath, all and singular, the matters aforesaid, and that this Honorable Court would be pleased to decree payment to libelants of the damages aforesaid, with interest and costs, and that said vessel, her engines, boilers, boats, tackle, apparel, furniture and appurtenances, may be condemned and sold to pay the amount due to the libelants, with

interest and costs, and that libelants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

Andros & Hengstler
Proctors for Libelants.

Verified.

INTERROGRTORIES PROPOUNDED BY LIBELANTS TO RESPONDENTS TO BE ANSWERED UNDER OATH.

FIRST: Was the Pacific Mail Steamship Company, a corporation, the owner of the steamship "Newport" on the 29th day of November, 1922? If not, who was the owner of said vessel.

SECOND: Who was the master of said vessel on the 29th day of November, 1922?

THIRD: Upon what voyage was said vessel bound on the 29th day of November, 1922?

FOURTH: What was the position of said vessel at 9:30 A. M. on the 29th day of November, 1922?

FIFTH: What was the true or magnetic course of said vessel at 9:30 A. M. on the 29th day of November, 1922?

SIXTH: What was the speed of said vessel at 9:30 A. M. on the 29th day of November, 1922?

SEVENTH: What time did the collision between the steamship "Newport" and the steamship "Svea" take place?

EIGHTH: What changes of speed, if any, in the engines of the steamship "Newport" were made after 9:30 A. M. on the 29th day of November, 1922, and

prior to the time of the collision with the steamship "Svea"?

NINTH: What changes of course, if any, were made by the steamship "Newport" after 9:30 A. M. on the 29th day of November, 1922, and prior to the time of said collision?

TENTH: What is the name of the officer or person, if any, who was on watch on the steamship "Newport" at the time of said collision and for half an hour prior thereto?

ELEVENTH: What were the weather conditions at the time of said collision and for half an hour immediately prior thereto?

TWELFTH: Was there any fog or haze at the time of said collision or during the half hour immediately prior thereto?

THIRTEENTH: When was the steamship "Svea" first sighted, if at all, by those in charge of the navigation of the steamship "Newport"?

FOURTEENTH: What was the bearing of the steamship "Svea" from the steamship "Newport" when first sighted, if the steamship "Svea" was sighted?

FIFTEENTH: Was not the "Svea" at all times on the starboard bow or starboard side of the "Newport"?

SIXTEENTH: If your answer to the fifteenth interrogatory is in the negative, state when the "Svea" was on the starboard side or starboard bow of the "Newport", and when, if at any time, she was not on the starboard bow or starboard side of the "Newport"?

SEVENTEENTH: Did not the "Newport" hit the port side of the "Svea" about amidships? If not, state where the "Newport" did hit the "Svea".

EIGHTEENTH: What assistance, if any, was rendered by the "Newport" to the "Svea" after the collision?

NINETEENTH: Did the "Newport" stand by the "Svea" after the collision?

TWENTIETH: If the answer to the nineteenth interrogatory is in the affirmative, state how long the "Newport" stood by the "Svea".

TWENTY-FIRST: If the answer to the nineteenth interrogatory is in the affirmative state the relative positions of the two vessels while the "Newport" was standing by?

TWENTY-SECOND: Were any offers of assistance made by the "Newport" to the "Svea"?

TWENTY-THIRD: What whistle signals, if any, were made by either vessel at the time of the collision, and prior thereto while said vessels were within hearing of each other?

TWENTY-FOURTH: What whistle signals were made by either vessel after the collision, and while the vessels were in hearing of each other?

[Endorsed]: No. 1202 Civil District Court of the United States for the Southern District of California, In Admiralty. Henry Wilson, F. A. Wilson and W. T. Wilson, a co-partnership doing business under the firm name and style of Wilson Bros. & Co., Libelants vs. Steamship "Newport" her engines, boilers, tackle, etc., J. McKinnon Master of said vessel and Pacific Mail Steamship Company, a corporation, owner of said vessel, Respondents. Libel in rem and personam for damages in collision, $151,000.00. Filed Dec. 8, 1922. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk.

Andros & Hengstler, Proctors for Libelants. Kohl Building, San Francisco, Cal.

[Title of Court and Cause.]

CLAIM OF PACIFIC MAIL STEAMSHIP COMPANY, a corporation.

NOW, before this Honorable Court appears PACIFIC MAIL STEAMSHIP COMPANY, a corporation, owner of the Steamer "NEWPORT" her engines, boilers, tackle, etc., by F. S. DURIE, its general agent, and makes claim to the said ship "NEWPORT", her engines, boilers, tackle, etc., and avers that it is now in possession of said ship "NEWPORT", her engines, boilers, tackle, etc., and that it is the true and bonafide owner of said Steamer "NEWPORT", her engines, boilers, tackle, etc., and that no other person or persons are the owner or owners thereof.

WHEREFORE, it prays to defend the said suit accordingly.

PACIFIC MAIL STEAMSHIP COMPANY,
By F. S. Durie
Its General Agent.

STATE OF CALIFORNIA,)
County of Los Angeles.) SS.

F. S. DURIE, being first duly sworn, deposes:

That Pacific Mail Steamship Company, a corporation, is the true and bonafide owner of the Steamer "NEWPORT", her engines, boilers, tackle, etc., against which suit has been commenced by HENRY WILSON, F. A. WILSON and W. T. WILSON, co-partners doing business under the firm name and style of WILSON BROTHERS AND COMPANY, a partnership, Libel-

ants, and that no other person is the owner or owners thereof; that for the purpose of this suit deponent is general agent of the said owner and is duly authorized by said owner to put in this claim, and deponent further says that at the time of the commencement of this suit the said Steamer "NEWPORT", her engines, boilers, tackle, etc., was in the lawful possession of said owner.

F. S. Durie

Subscribed and sworn to before me
this 9th day of December, 1922,
Cecil Betz (Seal)
Notary Public in and for the County
of Los Angeles, State of California.

[Endorsed]: No. 1202 Civil. In the District Court of the United States, Southern District of California, Southern Division. Henry Wilson, S. A. Wilson and W. T. Wilson, etc., Libelants, vs. the Steamer "Newport" etc., et al., Respondents. Claim of Pacific Mail Steamship Co., a corporation. Filed Dec. 9, 1922. Chas. N. Williams, clerk, by R. S. Zimmerman, deputy clerk. E. R. Young, Attorney at Law, 802-5 Haas Building. New address 1222-28 Stock Exchange Bldg. Los Angeles, California. C. E. Spencer, Attorney for Claimant.

At a stated term, to wit: The July Term, A. D. 1923 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 24th day of September, in the year of Our Lord one thousand nine hundred and twenty-three.

Present:

The Honorable BENJAMIN F. BLEDSOE, District Judge.

Henry Wilson and W. T. Wilson, a co-partnership doing business under the firm name and style of Wilson Bros. & Co. Libellants vs. Steamship "Newport" her engines, boilers, tackle, etc., J. McKinnon, Master of said vessel, and Pacific Mail Steamship Co., a corp., owner of said vessel, Respondents.	No. 1202-T Civil.

This cause coming on at this time for hearing of exceptions to libel and to Interrogatories; H. R. Kelly, Esq., being present in court for E. R. Young, Esq. proctor of record for the respondents; it is by the court ordered, pursuant to consent of respective parties, that the exceptions to libel and to Interrogatories be withdrawn and that respondent be given ten days to answer.

IN THE SOUTHERN DIVISION OF THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA. IN ADMIRALTY

HENRY WILSON, F. A. WILSON and W. T. WILSON, a co-partnership, doing business under the firm name and style of WILSON BROS. & CO., Libelants, vs. STEAMSHIP "NEWPORT" her engines, boilers, tackle, etc., J. McKINNON, Master of said vessel, and PACIFIC MAIL STEAMSHIP COMPANY, a corporation, owner of said vessel, Respondents.	No. 1202 Civil STIPULATION RE AMENDMENT OF LIBEL

IT IS HEREBY STIPULATED that the libel filed herein by Henry Wilson, F. A. Wilson and W. T. Wilson, a co-partnership doing business under the firm name and style of Wilson Bros. & Co., suing in their own behalf as part owners of the steamship "Svea", and as managing owners of said steamship, in behalf of the other part owners of said vessel, and in behalf of the master, officers and crew of said vessel, against the steamship "Newport", her engines, boilers, tackle, etc., and against J. McKinnon, master of said steamship "Newport", and against Pacific Mail Steamship Company, a corporation, owner of said steamship "Newport", and against all persons lawfully intervening for their interest in said steamship "Newport", may be amended by inserting the names of said part owners, master, officers and crew of said vessel in whose behalf said action was brought, and that said amendment may

and shall be deemed hereby to have been made
[A. & H.]

be accomplished by changing page 1 and page 2 of said libel down to paragraph II thereof, to read as follows:

"IN THE SOUTHERN DIVISION OF THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA IN ADMIRALTY

HENRY WILSON, F. A. WILSON, W. T. WILSON, LUCY W. KENDALL, A. KENDALL, A. J. PATTERSON, JAS. PENNYCOCK, O. BERTELSEN, J. S. HUTCHINSON E. C. HUTCHINSON, C. E. ALLEN, A. B. JOHNSON, KATIE M. JOHNSON, MARIETT JOHNSON, A. HANSEN, CLARA A. BUCHHOLZ, H. W. JACKSON, L. EVERDING, FRANK GRAHAM, MARGARET A. WILSON, Trustee, CARRIE E. WILSON, J. H. WILSON, MARGARET A. WILSON, WM. C. WILSON, JAMES GRAHAM, B. P. NELSON, KARL ROHBERG, CHARLES S. SEMSEN, JAMES HAYES, C. H. ANDERSON, HARRY WALTON, W. SAARIS, GUST ANDERSON, GUST SAARINEN, WM. R. REILLY, LOUIS NORLOFF, JOHN McDONALD, WILSON BANGAY, ROBERT WHITE, GEORGE DOLAN, JOHN LEWIS, SETT STRAND,	No. 1202 Civil AMENDED LIBEL
Libelants,	
vs.	
STEAMSHIP "NEWPORT", her engines, boilers, tackle, etc., J. McKINNON, Master of said vessel, and PACIFIC MAIL STEAMSHIP COMPANY, a corporation, owner of said vessel,	
Respondents.	

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The libel of Henry Wilson, F. A. Wilson, W. T. Wilson, Lucy W. Kendall, A. Kendall, A. J. Patterson, Jas. Pennycock, O. Bertelsen, J. S. Hutchinson, E. C. Hutchinson, C. E. Allen, A. B. Johnson, Katie M. Johnson, Mariett Johnson, A. Hansen, Clara A. Buchholz, H. W. Jackson, L. Everding, Frank Graham, Margaret A. Wilson, Trustee, Carrie E. Wilson, J. H. Wilson, Margaret A. Wilson, Wm. C. Wilson, James Graham, B. P. Nelson, Karl Rohberg, Charles S. Semsen, James Hayes, C. H. Anderson, Harry Walton, W. Saaris, Gust Anderson, Gust Saarinen, Wm. R. Reilly, Louis Norloff, John McDonald, Wilson Bangay, Robert White, George Dolan, John Lewis, Sett Strand, against the steamship "Newport", her engines, boilers, tackle, etc., and against J. McKinnon, master of said steamship "Newport", and against Pacific Mail Steamship Company, a corporation, owner of said steamship "Newport", and against all persons lawfully intervening for their interest in said steamship "Newport", in a cause of collision, civil and maritime, alleges as follows:

I.

That the libelants, Henry Wilson, F. A. Wilson, W. T. Wilson, Lucy W. Kendall, A. Kendall, A. J. Patterson, Jas. Pennycock, O. Bertelsen, J. S. Hutchinson, E. C. Hutchinson, C. E. Allen, A. B. Johnson, Katie M. Johnson, Mariett Johnson, A. Hansen, Clara A. Buchholz, H. W. Jackson, L. Everding, Frank Graham, Margaret A. Wilson, Trustee, Carrie E. Wilson, J. H. Wilson,

Margaret A. Wilson, Wm. C. Wilson, James Graham, B. P. Nelson were, at all of the times herein mentioned, and now are the owners of the steamship "Svea", of 648 gross tons burden or thereabouts, and of her engines, boilers, boats, tackle, apparel, furniture and appurtenances, in the following shares, to wit: Henry Wilson 16/64; F. A. Wilson 3/64; W. T. Wilson 2/64; Lucy W. Kendall 1/64; A. Kendall 2/64; A. J. Patterson 1/64; Jas. Pennycock 1/64; O. Bertelsen 2/64; J. S. Hutchinson 2/64; E. C. Hutchinson 2/64; C. E. Allen 2/64; A. B. Johnson 2/64; Katie M. Johnson 1/64; Mariett Johnson 1/64; A. Hansen 3/64; Clara A. Buchholz 2/64; H. W. Jackson 2/64; L. Everding 1/64; Frank Graham 1/64; Margaret A. Wilson, Trustee 4/64; Carrie E. Wilson 1/64; J. H. Wilson 1/64; Margaret A. Wilson 4/64; Wm. C. Wilson 2/64; James Graham 1/64; B. P. Nelson 4/64; that libelant, Karl Rohberg, was at all of the times herein mentioned, the master of said steamship "Svea"; that libelants, Charles S. Semsen, James Hayes, C. H. Anderson, Harry Walton, W. Saaris, Gust Anderson, Gust Saarinen, Wm. R. Reilly, Louis Norloff, John McDonald, Wilson Bangay, Robert White, George Dolan, John Lewis, Sett Strand, were at all of the times herein mentioned, the officers and crew of said steamship "Svea"."

* * * * * *

IT IS FURTHER STIPULATED that after said amendment said cause may proceed in the names of the libelants set forth in the amended libel, in whose behalf the original libel was filed, with the same force and effect

as though said names and each thereof had been set forth in said original libel.

Dated: October 10, 1923.

Andros & Hengstler

Proctors for Libelants.

Farnham P. Griffiths

McCutchen, Olney, Mannon & Greene

Proctors for Respondents and Claimant.

IT IS SO ORDERED:

Wm. P. James

Judge of the United States District Court.

[Endorsed]: No. 1202 Civil. District Court of the United States, for the Southern District of California, In Admiralty. Henry Wilson, et al., Libelants vs. Steamship "Newport," etc., J. McKinnon et al., respondents. Stipulation re amendment of Libel. Filed Oct. 15, 1923. Chas. N. Williams, Clerk, by L. J. Cordes, Deputy Clerk. Andros & Hengstler, Proctors for Libelants, Kohl Building, San Francisco, Cal.

IN THE SOUTHERN DIVISION OF THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA IN ADMIRALTY

PACIFIC STEAMSHIP COMPANY, a corporation, Claimant, Respondent and Cross-Libelant, vs. HENRY WILSON, F. A. WILSON, W. T. WILSON, LUCY W. KENDALL, A. KENDALL, A. J. PATTERSON, JAS PENNYCOCK, O. BERTELSEN, J. S. HUTCHINSON, E. C. HUTCHINSON, C. E. ALLEN, A. B. JOHNSON, KATIE M. JOHNSON, MARIETT JOHNSON, A. HANSEN, CLARA A. BUCHHOLZ, H. W. JACKSON, L. EVERDING, FRANK GRAHAM, MARGARET A. WILSON, Trustee, CARRIE E. WILSON, J. H. WILSON, MARGARET A. WILSON, Wm. C. WILSON, JAMES GRAHAM and B. P. NELSON, Libelants and Cross-Respondents.	No. 1202 CIVIL

CROSS-LIBEL.

I.

That at all times herein mentioned claimant, respondent and cross-libelant, Pacific Mail Steamship Company, was a corporation duly organized and existing under and by virtue of the laws of the State of New York, and was at all of said times the owner and operator of the Steamship "Newport."

II.

That at all times hereinafter mentioned Henry Wilson, F. A. Wilson, W. T. Wilson, Lucy W. Kendall, A. Kendall, A. J. Patterson, Jas. Pennycock, O. Bertelsen, J. S. Hutchinson, E. C. Hutchinson, C. E. Allen, A. B. Johnson, Katie M. Johnson, Mariett Johnson, A. Hansen, Clara A. Buchholz, H. W. Jackson, L. Everding, Frank Graham, Margaret A. Wilson, Trustee, Carrie E. Wilson, J. H. Wilson, Margaret A. Wilson, Wm. C. Wilson, James Graham and B. P. Nelson were owners of the Steamship "Svea."

III.

That at 9:53 A. M. on the 29th day of November, 1922, the Steamers "Newport" and "Svea" were in collision off the Coast of California at a point about 12 miles westerly from Pt. Buchon. That at the time of, and during the hour immediately prior to said collision, the weather was fair and clear, and until less than a minute immediately preceding the collision said "Newport" was proceeding on course S. 79 E. (Magnetic) at a speed of between 9 and 10 knots per hour. That during said time said Steamer "Svea," on information and belief, was proceeding on course N. W. by N. 1/2 N. (Magnetic). Cross-libelant admits that said Steamer "Newport" was in fault in respect to said collision in that she violated Articles 19, 22 and 23, but on information and belief alleges that said collision was at least not due solely to said faults but was proximately caused or contributed to by faults on the part of the "Svea" and those in charge of her navigation in that, among other things:

(1) That she did not have on watch proper and competent officers attending to their duties;

(2) That she failed to have a competent lookout properly stationed;

(3) That she failed to reverse her engines until the instant of collision and too late to avoid the collision;

(4) That she failed to alter her course until the instant of collision and too late to avoid the collision;

(5) That she violated Article 28 of the International Rules for Preventing Collisions in that she did not blow the signals required by said article, and blew signals in violation of said article;

(6) That approaching the "Newport," which had disregarded her signals and which gave no indication of heeding them, she failed to stop or slacken speed or take any precaution to avoid the impending collision;

(7) That she violated Article 27 of the International Rules for Preventing Collisions in that she maintained her course and speed after receiving clear indications from the "Newport" that she, the "Newport," intended to do nothing, and after a time when the "Newport" could no longer avoid the collision by her own action and yet during which the "Svea" could have avoided the collision by a proper use of her helm and engines;

(8) That said Steamship "Svea" and those in charge of her navigation were negligent in other and further particulars of which cross-libelant is not at present advised but when so advised will beg leave to offer proof of said negligent acts and will amend such cross-libel to conform to such facts.

IV.

That said "Newport" was an iron vessel and at the time of said collision was heavy laden, had a large number of passengers and a large crew, and in said collision her bow was badly crushed and the obvious con-

dition was one which caused the master of said "Newport" great concern for the safety of the vessel, her passengers, cargo and crew; that the Steamer "Svea" was a wooden vessel and at the time of said collision, on information and belief, was proceeding light, with little or no cargo, no passengers and but a small crew; that the damage sustained by the "Svea" by reason of said collision was apparently not serious and she was apparently not in need of such immediate assistance as was the "Newport" under the circumstances, and in fact, on information and belief, such was the judgment of those in charge of said "Svea."

That notwithstanding the premises, said Steamer "Svea," her master and those in charge of her, failed and neglected to stay by said Steamship "Newport" until the master or other person had ascertained that said Steamship "Newport" had no need of assistance, or further assistance, and failed and neglected to stay by said Steamship "Newport" and failed and neglected to render any assistance to said Steamship "Newport," and at said times and at all times thereafter failed and neglected to give the master or any other person in charge of said Steamship "Newport," or to any one person on board said vessel, the name of said Steamship "Svea," her port of registration or the port or place to which she belonged, or the name of the port from which and to which she was bound, or any of them.

V.

That by reason of said collision and the resulting damage to said Steamship "Newport," and on account of the expenses resultant therefrom, and by reason of the damages for detention of said vessel, due to and arising

out of said collision, cross-libelant has been damaged in the sum of approximately Fifty-five Thousand (55,000) Dollars, no part of which damage has been paid.

VI

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, cross-libelant prays that libelants and cross-respondents may be cited to appear and make answer to this cross-libel, and that they be required to give security in the usual form to cross-libelant, in accordance with its stipulation heretofore filed herein for the damages claimed by this cross-libelant, and that all proceedings upon the original libel herein be stayed until such security be given; that libelants and cross-respondents be further required to answer on oath this cross-libel and the matters therein contained, and that this Honorable Court may be pleased to decree to cross-libelant the amount due it, with interest and costs, and that cross-libelant may have such other and further relief as in law and justice it may be entitled to receive.

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Cross-Libelant.

Verified.

INTERROGATORIES PROPOUNDED TO LIBELANTS, TO BE ANSWERED ON OATH.

1. What is the length, beam, depth, gross tonnage and net registered tonnage of the Steamship "Svea?"

2. At what time on the morning of November 29, 1923, was the Steamer "Newport" first sighted by those in charge of the navigation of the "Svea?"

3. With reference to the bow of said "Svea" how did said "Newport" bear at the time said "Newport" was first sighted?

4. How far away from said "Svea" was said "Newport" when the "Newport" was first sighted?

5. What whistle signals were blown on the "Svea" from the time said "Newport" was first sighted until the time of collision, and at what time was each blown and how far apart were the vessels at each of such times?

6. What changes of course or helm were made by said Steamship "Svea" from the time said "Newport" was first sighted until the said collision, and at what time was each executed, and how far apart were the vessels at each of such times?

7. What changes in speed or direction of the engines of said Steamship "Svea" from the time said "Newport" was first sighted until the time of said collision, and at what time was each such change made and how far apart were the said vessels at each of such times?

8. At the time of said collision was said "Svea" light or heavy loaded, or, if partially loaded, to what extent?

9. Immediately before said collision what was the draft of said "Svea" forward and aft?

10. Loaded as she was at the time of said collision, and proceeding at a speed of 7-½ knots through the water, how long would it take said Steamer "Svea" to come to a stop in smooth water, and how far would she travel, after putting her engines at full speed astern?

11. Going at a speed of 7-½ knots per hour through the water, what would be the radius of the circle described by the Steamer "Svea" on putting her helm hard astarboard and leaving it there until she completed the circle?

12. What result would be attained under the question put in Interrogatory No. 11 should the helm be put hard aport, under the same conditions?

13. Were there any changes in the bearing of the said "Newport" from the "Svea" from the time she was sighted until the time of collision?

14. If you answer the preceding interrogatory in the affirmative, state what changes occurred and when and how far apart the vessels were when each change was discovered by those in charge of said "Svea."

15. Were any signals from the "Newport" heard on board the "Svea" before the collision? If so, what signals were heard, at what time was each heard and how far apart were the vessels at such time?

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Claimant,
Respondent and Cross-Libelant.

[Endorsed]: No. 1202 Civil. In the Southern Division of the United States District Court for the Southern District of California. In Admiralty. Pacific Mail Steamship Company, a corporation, claimant, Respondent and Cross-Libelant, vs. Henry Wilson, F. A. Wilson et al., Libelants and Cross-Respondents. Cross-Libel. Service of the within cross-libel and interrogatories propounded to libelant and receipt of a copy is hereby admitted this 18th day of October, 1923. Andros & Hengstler. Filed Oct. 20, 1923. Chas. N. Williams clerk, by L. J. Cordes, deputy clerk. McCutchen, Olney, Mannon & Greene Proctors for Claimant, Respondent and Cross Libelant. San Francisco, California.

IN THE SOUTHERN DIVISION OF THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA IN ADMIRALTY

HENRY WILSON, F. A. WILSON W. T. WILSON, LUCY W. KENDALL, A. KENDALL, A. J. PATTERSON, JAS. PENNYCOCK, O. BERTELSEN, J. S. HUTCHINSON, E. C. HUTCHINSON, C. E. ALLEN A. B. JOHNSON, KATIE M. JOHNSON, MARIETT JOHNSON, A. HANSEN, CLARA A. BUSHHOLZ, H. W. JACKSON, L. EVERDING, FRANK GRAHAM, MARGARET A. WILSON, Trustee, CARRIE E. WILSON, J. H. WILSON, MARGARET A. WILSON, WM. C. WILSON, JAMES GRAHAM, B. P. NELSON, KARL ROHBERG, CHARLES S. SEMSEN, JAMES HAYES, C. H. ANDERSON, HARRY WALTON, W. SAARIS, GUST ANDERSON, GUST SAARINEN, WM. R. REILLY, LOUIS NORLOFF,, JOHN McDONALD, WILSON BANGAY, ROBERT WHITE, GEORGE DOLAN, JOHN LEWIS, SETT STRAND, Libelants,	)	No. 1202 CIVIL
vs.	)	
STEAMSHIP "NEWPORT," her engines, boilers, tackle, etc., J. McKINNON, Master of said vessel, and PACIFIC MAIL STEAMSHIP COMPANY, a corporation, owner of said vessel, Respondents.	)	
PACIFIC MAIL STEAMSHIP COMPANY, a corporation, Claimant.	)	

ANSWER OF CLAIMANT AND RESPONDENTS TO AMENDED LIBEL.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The answer of Pacific Mail Steamship Company, claimant and respondent above named, and J. McKinnon, respondent above named, to the amended libel of Henry Wilson, et al., against Pacific Mail Steamship Company, a corporation, the Steamship "Newport," her engines, boilers, tackle, etc., and against J. McKinnon, admits, denies and alleges as follows:

I.

Answering unto the allegations of Article I of said amended libel, claimant and respondents admit the allegations thereof in respect to the ownership of said Steamship "Svea," but allege they are ignorant concerning the remaining allegations of said article, wherefore they call for strict proof thereof, so far as may be material.

II.

Answering unto the allegations of Article II of said amended libel, admit the same.

III.

Answering unto the allegations of Article III of said amended libel, admit the same.

IV.

Answering unto the allegations of Article IV of said amended libel, admit the same except that they allege they are ignorant concerning the allegations that as a result of said collision said "Svea" was so badly dam-

aged that she filled with water and capsized before she could make port, wherefore they demand strict proof of said allegations so far as may be material, and except also that they allege they are ignorant concerning the allegation that said "Svea" was almost a total loss, wherefore they demand strict proof thereof so far as may be material.

V.

Answering unto the allegations of Article V of said amended libel, deny each and every, all and singular, the allegations of said article.

VI.

Answering unto the allegations of Article VI of said amended libel, said claimant and respondents admit that at the time of said collision the weather was fair and clear. Allege that they are ignorant as to the exact course and speed of the said Steamer "Svea," wherefore they call for strict proof thereof so far as the same may be material. Deny that said Steamer "Newport" was proceeding on an East Southeasterly course, and in this respect allege that the course of said "Newport" at said time was South 79° East. Deny that said "Newport" was proceeding at a high rate of speed. Admit that at all of said times said "Newport" was on the port bow of the "Svea" and that at all of said times the Steamer "Svea" was on the starboard side of the "Newport." Allege that they are ignorant concerning the allegation that at all of said times said Steamship "Svea" held her course and speed, and demand strict proof thereof. Deny that at all of said times said "Svea" complied with all the rules of navigation, or was at all of said times navigated with due caution and skill by the master and officers thereof, and in this respect allege

that said Steamship "Svea" was negligently navigated, as more particularly alleged in the cross-libel on file herein. Deny that said collision was not caused by any fault, negligence or want of due care on the part of libelants or the master or officers or crew of said Steamship "Svea" and in this respect allege that said collision was proximately caused or contributed to by the negligence of those in charge of the navigation of said Steamship "Svea," as more particularly alleged in the cross-libel on file herein.

Except as hereinbefore expressly admitted, deny each and every, all and singular, the allegations of said Article VI.

VII.

Answering unto the allegations of Article VII of said amended libel, claimant and respondents deny that said collision or the consequent damages to said Steamship "Svea" or to her owners, master, officers or crew, were due entirely to the fault of respondents or those in charge of the navigation of said Steamship "Newport." Deny that respondents, J. McKinnon or Pacific Mail Steamship Company, personally were guilty of the faults alleged in said article or any others, or at all.

Deny that at the said alleged or any time said Steamer "Newport" did not have a proper or competent officer on watch.

Deny that at said alleged or any time said Steamer "Newport" did not have a proper or competent helmsman at the steering wheel.

Deny that at the said alleged or any time said Steamship "Newport" did not have a proper and competent lookout.

Admit that said Steamship "Newport" violated Articles 19, 22 and 23 of the International Rules for Preventing Collisions, as alleged in subdivisions numbered fourth, fifth and sixth of said Article VII.

Deny each and every, all and singular, the allegations of subdivision numbered seventh of said Article VII, and except as hereinbefore expressly admitted, deny each and every, all and singular, the allegations of said Article VII. Allege that said collision and the consequent damages to both said Steamship "Svea" and said Steamship "Newport," their owners, officers and crews, were proximately caused or contributed to by the fault of the said Steamship "Svea" and those in charge of her navigation, as alleged in the cross-libel filed in this court and cause.

VIII.

Answering unto the allegations of Article VIII of said amended libel, claimant and respondents admit that said Steamship "Newport" did not render any assistance to said "Svea," nor did she give to anyone on board said vessel her name, port or registry, or port or place to which she belonged, or the name of the port and place from which and to which she was bound, except so far as the same was conveyed by information from signs painted and printed upon her.

Except as herein expressly admitted, deny each and every, all and singular, the allegations of said Article VIII.

Allege that said Steamer "Svea" was a wooden vessel and at the time of said collision was light, carried no passengers, but a small crew, was apparently not seriously damaged and not in serious danger, and requested no assistance from, or information concerning

the said "Newport." That, on the other hand, said Steamer "Newport" was an iron vessel, heavy loaded, carried a large number of passengers and a large crew, and had her bow badly crushed in and was at first thought to be in grave danger of sinking. That by reason of the circumstances it would have been subjecting said vessel, her passengers, cargo, officers and crew to an unreasonable hazard and danger for her to remain by the "Svea" any longer than she did remain.

IX.

Answering unto the allegations of Article IX of said amended libel, admit the allegation that no part of said alleged damage has been paid by claimant or respondents, but allege that they are ignorant concerning the remaining allegations of said Article IX, wherefore they call for strict proof thereof so far as the same may be material.

X.

Answering unto the allegations of Article X of said amended libel, deny that all and singular, or all or singular, the premises are true, but admit the same are within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, said claimant and respondents pray that the amended libel of libelants may be dismissed or that in the alternative, if both vessels be found at fault herein, that a decree for damages be rendered in accordance with the principles of cross-liabilities applicable in such cases, and for such other and further relief as to the court may be deemed proper.

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Claimant and Respondents.

ANSWERS TO INTERROGATORIES PROPOUNDED BY LIBELANTS.

1. Yes.
2. George McKinnon.
3. From San Francisco to Central American Ports.
4. About 10 to 12 miles southwesterly of Point Buchon.
5. South 79° East magnetic.
6. Between 9 and 10 knots.
7. 9:53 A. M.
8. The engines were reversed from full ahead to full astern.
9. The helm was put hard astarboard.
10. J. H. McKeown was the watch officer on watch.
11. Clear and fair.
12. No.
13. About 9:45 A. M.
14. Three or four points on the "Newport's" starboard bow.
15. Yes.
16. No answer.
17. Yes.
18. None. None was requested nor apparently needed.
19. Yes, so far as required by law.
20. As long as practicable.
21. Various positions.
22. No.
23. One by the "Newport."
24. None by the "Newport."

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Claimant and Respondents.

Verified.

INTERROGATORIES PROPOUNDED TO LIBELANTS, TO BE ANSWERED ON OATH.

1. What is the length, beam, depth, gross tonnage, net registered tonnage of the Steamship "Svea?"

2. At what time on the morning of November 29, 1923, was the Steamer "Newport" first sighted by those in charge of the navigation of the "Svea?"

3. With reference to the bow of said "Svea" how did said "Newport" bear at the time said "Newport" was first sighted?

4. How far away from said "Svea" was said "Newport" when the "Newport" was first sighted?

5. What whistle signals were blown on the "Svea" from the time said "Newport" was first sighted until the time of collision, and at what time was each blown and how far apart were the vessels at each of such times?

6. What changes of course or helm were made by said Steamship "Svea" from the time said "Newport" was first sighted until the said collision, and at what time was each executed, and how far apart were the vessels at each of such times?

7. What changes in speed or direction of the engines of said Steamship "Svea" from the time said "Newport" was first sighted until the time of said collision, and at what time was each such change made and how far apart were the said vessels at each of such times?

8. At the time of said collision was said "Svea" light or heavy loaded, or, if partially loaded, to what extent?

9. Immediately before said collision what was the draft of said "Svea" forward and aft?

10. Loaded as she was at the time of said collision, and proceeding at a speed of 7-½ knots through the

water, how long would it take said Steamer "Svea" to come to a stop in smooth water, and how far would she travel after putting her engines at full speed astern?

11. Going at a speed of 7-½ knots per hour through the water, what would be the radius of the circle described by the Steamer "Svea" on putting her helm hard astarboard and leaving it there until she completed the circle?

12. What result would be attained under the question put in Interrogatory No. 11 should the helm be put hard aport, under the same conditions?

13. Were there any changes in the bearing of the said "Newport" from the "Svea" from the time she was sighted until the time of collision?

14. If you answer the preceding interrogatory in the affirmative, state what changes occurred and when and how far apart the vessels were when each change was discovered by those in charge of said "Svea."

15. Were any signals from the "Newport" heard on board the "Svea" before the collision? If so, what signals were heard, at what time was each heard and how far apart were the vessels at such time?

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Claimant and Respondents.

[Endorsed]: No. 1202 Civil. In the Southern Division of the United States District Court for the Southern District of California. In Admiralty. Henry Wilson, F. A. Wilson, et al., Libelants, vs. Steamship "New port" her engines, etc., et al., Respondents. Pacific Mail Steamship Company, a corporation, Claimant. Answer of Claimant and Respondents to Amended Libel. Service

of the within Answer, Answer to Interrogatories, and interrogatories and receipt of a copy is hereby admitted this 18 day of Oct. 1923. Andros & Hengstler. Filed Oct. 20, 1923. Chas. N. Williams, Clerk, By L. J. Cordes, deputy clerk. McCutchen, Olney, Mannon & Greene, Balfour Building, San Francisco, California.

[Title of Court and Cause.]

ANSWER TO CROSS-LIBEL.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SITTING IN ADMIRALTY:

Now come the libelants and cross-respondents herein, and for answer to the cross-libel of claimant, respondent and cross-libelant herein, admit, deny and allege as follows:

I.

Answering unto the allegations of Article I of said cross-libel, libelants and cross-respondents admit the same.

II.

Answering unto the allegations of Article II of said cross-libel, libelants and cross-respondents admit the same.

III.

Answering unto the allegations of Article III of said cross-libel, libelants and cross-respondents admit that at 9:53 A. M. on the 29th day of November, 1922, the steamers "Newport" and "Svea" were in collision off the coast of California at a point about 12 miles westerly

from Pt. Buchon; admit that at the time of, and during the hour immediately prior to said collision, the weather was fair and clear; deny, for want of information or belief, that until less than a minute immediately preceding the collision, or at any of the time or times, prior to the said collision herein mentioned, or at all, said "Newport" was proceeding on course S. 79 E. (Magnetic); have neither information nor belief respecting the allegation that until less than a minute immediately preceding the collision said "Newport" was proceeding at a speed of between 9 and 10 knots per hour, and therefore deny that until less than a minute immediately preceding the collision, or at any of the time or times prior to the said collision herein mentioned, or at all, said "Newport" was proceeding at a speed between 9 and 10 knots per hour; in this last mentioned behalf, allege that said "Newport," at the time of, and for a considerable period of time prior to the said collision, was proceeding at a high rate of speed; admit that during said time, said steamer "Svea" was proceeding on course N. W. by N. ½ N. (Magnetic); admit that said steamer "Newport" was in fault in respect to said collision in that she violated Articles 19, 22 and 23; in this last mentioned behalf, allege that the said steamer "Newport" was at fault in other and further particulars, as will be more particularly set out hereinafter; deny that said collision was at least, or otherwise, not due solely to said faults on the part of said steamer "Newport," unless other and further faults committed by her, and not herein particularly set forth, contributed thereto; deny that said collision was proximately or otherwise caused or contributed to by fault or faults on the part of the

steamer "Svea" and/or those in charge of her navigation, in the particulars as alleged in said cross-libel, or any of them, or at all, and in this connection deny that said steamer "Svea" did not have on watch proper and/or competent officers attending to their, or any of their duties; deny that said steamer "Svea" failed to have a competent lookout properly stationed; admit that said steamer "Svea" did not reverse her engines until the instant of the collision; in this last mentioned behalf, allege that said steamer "Svea" failed in no duty, and on the contrary, did her duty, by not reversing her engines prior to the said collision; allege further, that had the steamer "Svea" reversed her engines prior to the said collision, the same would not have been avoided thereby, and the said steamer "Svea" would have opened herself to a charge of fault; admit that the said steamer "Svea" failed to alter her course until the instant of collision, and in this last mentioned behalf, allege that the said steamer "Svea" altered her course an instant prior to the collision, but that said alteration was made in extremis, and for the purpose of easing the blow from the on-coming "Newport," and that at said time said collision was unavoidable; allege further, in the same regard, that said steamer "Svea" failed in no duty, and on the contrary, did her duty, by not altering her course prior thereto, that if she had done otherwise, the said collision would not have been avoided, and she would have opened herself to a charge of fault; deny that said steamer "Svea" violated Article 28, or any other article, of the International Rules for Preventing Collisions at all, or in that she did not blow the signals required by said article; deny that said steamer "Svea"

blew signals in violation of said Article; admit that steamer "Newport" disregarded signals of the steamer "Svea"; deny that steamer "Newport" gave no indication of heeding the signals of the steamer "Svea," but admit that the actions of the "Newport" were such as to raise a doubt as to whether she intended to obey the rule of the road; admit that the steamer "Svea" did not stop or slacken speed prior to the collision; deny that the said steamer "Svea" failed to take any precaution to avoid the impending collision; and in this last behalf, allege that the said steamer "Svea," complied with the Rules for Preventing Collisions in every respect; deny that said steamer "Svea" violated Article 27, or any other article, of the International Rules for Preventing Collisions, in that she maintained her course and/or speed after receiving clear indication from the "Newport" that she, the "Newport," intended to do nothing, and/or after a time when the "Newport" could no longer avoid the collision by her own action and/or during a time in which the steamer "Svea" could have avoided the collision by a proper use of her helm and/or engines, or at all; deny that said steamer "Svea," prior to the said collision, received clear or other indications from the "Newport," or at all, that the said "Newport" intended to do nothing; deny that after the time when the steamer "Newport" could no longer avoid the collision by her own action, the said steamer "Svea" could have avoided the collision by her own action, or by the proper or other use of her helm and/or engines, or at all; allege that after the time when the said steamer "Newport" could no longer avoid the collision by her own action, the situation of the steamer "Svea" was one

in extremis; deny that said steamship "Svea" and/or those in charge of her navigation, or any of them, were negligent in any particular or particulars any of the time or times herein mentioned; and allege, to the contrary, that said steamship "Svea" was at all of the times in said cross-libel mentioned, managed and navigated in a skillful and seamanlike manner.

IV.

Answering unto the allegations of Article IV of the said cross-libel, libelants and cross-respondents have neither information nor belief respecting the allegations as to the construction of the steamer "Newport," her burden, the number of passengers, number and specification of her crew, the damage to her bow in said collision and the obvious condition and the concern of the master for the safety of his charges, and therefore require proof thereof, if material; admit that the steamer "Svea" was a wooden vessel, proceeding light at the time of said collision, with little or no cargo, and no passengers; deny that the said steamer had a small crew, and in this behalf, allege that she had a complete crew as required by law; deny that the damage sustained by the said steamer "Svea" by reason of said collision was apparently not serious; deny that the said steamer "Svea" was apparently not in need of such immediate assistance as was the "Newport" under the circumstances; deny that such was the judgment of those in charge of said steamer "Svea."

Deny that said steamer "Svea," her master and/or those in charge of her, or any of them, failed and/or neglected to stay by said steamship "Newport," at all, or until the master or other person had ascertained

that said steamship "Newport" had no need of assistance, or of further assistance, a nd/or failed and/or neglected to stay by said steamship "Newport," and/or failed and/or neglected to render any assistance to said steamship "Newport;" and in the same behalf, allege that said steamship "Newport" drew away from the said steamship "Svea" immediately following the collision, that the latter immediately followed the said "Newport" at full speed, but could not catch up with her owing to the great speed of the "Newport," and in this connection further allege that the "Svea" made whistle and flag signals of distress all of which were disregarded by the "Newport;" deny that said steamer "Svea," her master and/or those in charge of her, or any of them, failed and/or neglected to give, but admit that they did not give, to the master or any other person in charge of said steamship "Newport," or to any one person on board said vessel, the name of the said steamship "Svea," her port of registration or the port or place to which she benonged, or the name of the port from which and to which she was bound, or any of them; in the same behalf allege that none of the last-named parties requested or manifested any interest in the last aforementioned particulars as to the steamship "Svea," and that no opportunity was afforded for the giving of the said information, by reason of the immedia'e departure of the said "Newport."

V.

Answering unto the allegations of Article V of the said cross-libel, libelants and cross-respondents have neither information nor belief as to the nature or the amount of the damage, sustained by said steamship

"Newport" by reason of said collision, and therefore deny that cross-libelant has been damaged in the sum of approximately Fifty-Five Thousand Dollars ($55,000.00), or in any other sum, and call for strict proof thereof, if material; admit that no part of said alleged damage has been paid to cross-libelant by cross-respondents.

VI.

Answering unto the allegations of Article VI of the said cross-libel, libelants and cross-respondents admit that the premises are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court, but deny that the premises, all and/or singular, except as herein admitted, are true.

* * * * * * * * * * *

AND FOR FURTHER AND FIRST AFFIRMATIVE DEFENSE LIBELANTS AND CROSS-RESPONDENTS ALLEGE:

I.

That heretofore, to-wit: on the 29th day of November, 1922, at about 9:53 A. M. on said day, while the steamship "Svea," owned by libelants and cross-respondents, was bound on a voyage from the port of Ventura, in the State of California, to the port of Aberdeen, in the State of Washington, and while off the coast of California, at a point about twelve (12) miles westerly from Point Buchon, said vessel was run into by the steamship "Newport," owned by said respondents and cross-libelants; that as a result of said collision said steamship "Svea" was so badly damaged that she filled with water and capsized before she could make port; and was an almost total loss.

II.

That said steamship ' 'Svea" was, at the time of said collision, and at all times prior thereto during said voyage, and at the commencement of said voyage, in all respects seaworthy, and properly and efficiently officered, manned, supplied, equipped and furnished, and well and sufficiently fitted and supplied with suitable engines, boilers, machinery, tackle, apparel, appliances and furniture, all in good order and condition, and suitable for the business and voyage in which she was engaged; that the owners of said steamship had at all of said times exercised due diligence to make said vessel in all respects seaworthy, and properly and efficiently officered, manned, equipped, supplied and furnished, and well and sufficiently fitted and supplied with suitable engines, boilers, tackle, apparel, appliances and furniture.

III.

That at the time of said collision the weather was fair and clear; that said steamship "Svea" was at said time, and had been for about thirty-eight (38) minutes prior thereto, proceeding on a course Northwest by North one half North magnetic, at a speed of about seven and one-half (7½) knots per hour; that said steamship "Newport" was proceeding on an East Southeasterly course, at a high rate of speed, and was at all of said times on the port bow of the "Svea," and at all of said times the "Svea" was on the starboard side of the "Newport"; that at all of said times said steamship "Svea" held her course and speed, and complied with all rules of navigation, and was at all of said times navigated with due caution and skill by the master and officers thereof; that said collision was not caused

by any fault, negligence or want of due care on the part of libelants and cross-respondents, or the master, or the officers, or crew of said steamship "Svea", or any of them.

* * * * * * * * * * *

AND FOR A FURTHER AND SECOND AFFIRMATIVE DEFENSE, LIBELANTS AND CROSS-RESPONDENTS ALLEGE:

I.

Libelants and cross-respondents hereby refer to paragraphs I to III inclusive of the first affirmative defense and by such reference incorporate the allegations of said paragraphs herein with the same force and effect as though they and each thereof were set out at length herein.

II.

Libelants and cross-respondents allege that said collision and the consequent damages to said steamship "Svea", and to her owners, master, officers and crew, were entirely due to the fault of the cross-libelants and respondents, and particularly those in charge of the navigation of said steamship "Newport", and that said vessel was at fault in the following, among other particulars:

FIRST: Upon information and belief, that said vessel did not have a proper or competent officer on watch at the time of said collision, and immediately prior thereto.

SECOND: Upon information and belief, that said vessel did not have a proper or competent helmsman at the steering wheel of said vessel at the time of said collision, or immediately prior thereto.

THIRD: Upon information and belief, that said steamship "Newport" at, and immediately prior, to the time of said collision, did not have a proper and competent lookout on watch.

FOURTH: That said steamship "Newport" at, and immediately prior, to the time of said collision, was violating Article 19 of the International Rules for Preventing Collisions, in that said vessel having the steamship "Svea" on the starboard side of said steamship "Newport" did fail to keep out of the way of said steamship "Svea".

FIFTH: That said steamship "Newport" at, and immediately prior, to the time of said collision was violating Article 22 of said International Rules for Preventing Collisions, in that it failed to pass astern of said steamship "Svea".

SIXTH: That said steamship "Newport" at, and immediately prior, to the time of said collision was violating Article 23 of said International Rules for Preventing Collisions, in that while approaching said steamship "Svea", and while it was obliged by the said International Rules to keep out of the way of said steamship "Svea", it failed to slacken its speed, and did fail to stop, and did fail to reverse its engines.

SEVENTH: That said steamship "Newport" was negligent in other and further particulars, of which the libelants and cross-respondents are not at present advised, but when so advised will beg leave to offer proof of said negligent acts, and to amend their answer to conform with such facts.

* * * * * * * * * *

nothing by its cross-libel, and that the same may be dismissed with costs, and that libelants and cross-respondents may have such other relief as may be deemed meet in the premises.

Andros & Hengstler
Proctors for Libelants and
Cross-Respondents.

Verified.

[Title of Court and Cause.]

ANSWER TO INTERROGATORY NO. 1: Length 174 feet; beam 38.2 feet; depth 13.3 feet; gross tonnage 618; net registered tonnage 370.

ANSWER TO INTERROGATORY NO. 2: About 9:20 A. M.

ANSWER TO INTERROGATORY NO. 3: On the port bow of the "Svea".

ANSWER TO INTERROGATORY NO. 4: Nothing less than 8 miles.

ANSWER TO INTERROGATORY NO. 5: One blast by "Svea"—vessels about 2 miles apart—a few minutes before collision—exact time unknown. Four blasts—about one and one-half or two minutes after first signal—vessels more than 1 mile apart—exact time unknown. Four short blasts—vessels about 3/8 mile apart—time unknown.

ANSWER TO INTERROGATORY NO. 6: No changes of course or helm until vessels were about 100 feet apart, when helm was ported to ease the blow of the "Newport".

ANSWER TO INTERROGATORY NO. 7: No change in engines until instant of collision when they were stopped.

ANSWER TO INTERROGATORY NO. 8: Light.

ANSWER TO INTERROGATORY NO. 9: Draft 14 feet aft, 7 feet 6 inches forward.

ANSWER TO INTERROGATORY NO. 10: Don't know—never tried it.

ANSWER TO INTERROGATORY NO. 11: Don't know—never measured it.

ANSWER TO INTERROGATORY NO. 12: Don't know—never measured it.

ANSWER TO INTERROGATORY NO. 13: Possibly some slight changes in bearing—the "Newport" was at all times on the port bow of the "Svea".

ANSWER TO INTERROGATORY NO. 14: Cannot state—see answer to No. 13.

ANSWER TO INTERROGATORY NO. 15: None.

F. A. Wilson

Libelant and cross-respondent in his own behalf, and in behalf of the others of said libelants and cross-respondents.

Subscribed and sworn to before me, this 22nd day of November, 1923.

E. M. Clark

Notary Public in and for the City and County of San Francisco, State of California.

[Seal]

[Endorsed]: No. 1202 Civil. District Court of the United States for the Southern District of California, in Admiralty. Henry Wilson, et al., libelants, vs. Steamship "Newport," etc., et al., respondents, Pacific Mail Steamship Company, a corporation, claimant. Pa-

cific Mail Steamship Company, a corporation, Claimant, Respondent and Cross-Libelant, vs. Henry Wilson, et al., Libelants and Cross-Respondents. Answer to Cross-Libel and Answers to Interrogatories Propounded in Answer and Cross-Libel. Due service and receipt of a copy of the within Answer & Answers to Interrogatories is hereby admitted this 22nd day of Nov. 1923. Farnham P. Griffiths, McCutchen, Olney, Mannon & Greene. Filed Nov. 26, 1923. Chas. N. Williams, Clerk by L. J. Cordes, deputy clerk. Andros & Hengstler Proctors for Libelants and Cross-Respondents. Kohl Building, San Francisco, California.

At a stated term, to wit: The January Term, A. D. 1924 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday the sixth day of May, in the year of Our Lord one thousand nine hundred and twenty-four.

Present:

The Honorable PAUL J. McCORMICK, District Judge.

Henry Wilson, et al.
Libellants,
vs.
The Steamer "Newport", etc.,
Respondent.
} No. 1202 Civil.

This cause coming before the court at this time for hearing; L. K. Vermille, Esq., and Frederick W. Dorr, Esq., appearing as proctor for the libellants and H. R. Kelly, Esq., and Russell A. Mackey, Esq., appearing as proctor for the respondent; and

The following depositions having been offered and admitted in evidence:

.....Ex. No. : Deposition of Karl Rohberg,
" " No. : Deposition of Charles S. Semsen,
" " No. : Deposition of John McCowan,

James Hayes is called and sworn and testifies in behalf of the libellant, and in connection with his testimony there having been offered and admitted in evidence on behalf of the libellants the following exhibits, to wit:

Libellants' Ex. 2—1 photograph,
" Ex. 3—1 photograph,
" Ex. 4—1 photograph,
" Ex. 5—1 photograph,
" Ex. 6—1 photograph,

Said James Hayes is cross examined by Russell A. Mackey, Esq. counsel for the respondent; and

Thereupon there is offered and admitted in evidence on behalf of the respondent the following exhibit, to wit:

Respondent's Ex. A—diagrams of signal of bells; and

The Libellants and cross respondents having thereupon rested,

Attorney Russell A. Mackey, Esq. makes a statement to the court; and

George McKinnon having thereupon been called and sworn and having testified in behalf of the respondent;

There is offered and admitted and marked in evidence on behalf of the respondents the following exhibit, to wit:

Respondent's Ex. B—diagram;

and

Said witness having been cross examined by Attorney Frederick W. Dorr, Esq. of counsel for the libellants; and

C. A. Haggendorff having been called and sworn and having testified in behalf of the respondent,

It is by the court ordered that this cause be continued to the hour of two o'clock P. M. and at the hour of two o'clock P. M. the court having reconvened and all being present as before

Fred Warner is called and sworn and testifies in behalf of the Respondent, and Albert E. Winslow and John O. Blanchfield having been called and sworn and having testified in behalf of the respondent,

The respondent rests, and

The Libellant having rested,

Attorney Frederick W. Dorr, Esq. argues to the court on behalf of the libellant, and

Russell A. Mackey, Esq. having argued to the court on behalf of the respondent, and

Said Frederick W. Dorr, Esq. having argued in rebuttal for the libellant,

This cause is taken under submission by the court.

At a stated term, to wit: The July A. D. 1924 Term, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, on Wednesday the 10th day of September, in the year of Our Lord one thousand nine hundred and twenty-four;

Present:

The Honorable PAUL J. MC CORMICK, District Judge.

Henry F. Wilson, et al.,
Plaintiffs.
vs.
Steamship "Newport,"
Defendant.
} No. 1202 Civil.

A decree is ordered for the libellants and cross respondent and against the cross libellants, respondents and claimants, pursuant to and in accordance with written memorandum opinion filed this day; and it is further ordered that proctors for the libellants and cross respondents prepare same and present upon adverse parties and present the same to the court as appropriate decree.

[Title of Court and Cause.]

INTERLOCUTORY DECREE AND ORDER REFERRING CAUSE TO COMMISSIONER.

The above entitled cause having come on regularly for hearing in open court on the 6th day of May, 1924, libelants and cross-respondents being represented by Messrs. Andros & Hengstler and Frederick W. Dorr, Esq., and cross-libelants, respondents and claimant being represented by Messrs. McCutchen, Olney, Mannon & Greene, and Russell A. Mackey, Esq., and all the evidence having been submitted to the court, and the court having considered the evidence, and the oral arguments of counsel, and the authorities submitted by counsel, and having on the 10th day of September, 1924, filed its memorandum opinion deciding that the collision between the steamship "Newport" and the steamship "Svea" on the 29th day of November, 1922, was due to the gross negligence and plain fault of said steamship "Newport", and that said steamship "Newport" was

solely at fault for said collision, and liable for all damages caused thereby, and that the steamship "Svea" was not in fault for said collision;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the libelants Henry Wilson, F. A. Wilson, W. T. Wilson, Lucy W. Kendall, A. Kendall, A. J. Patterson, Jas. Pennycock, O. Bertelsen, J. S. Hutchinson, E. C. Hutchinson, C. E. Allen, A. B. Johnson, Katie M. Johnson, Mariett Johnson, A. Hansen, Clara A. Buchholz, H. W. Jackson, L. Everding, Frank Graham, Margaret A. Wilson, Trustee, Carrie E. Wilson, J. H. Wilson, Margaret A. Wilson, Wm. C. Wilson, James Graham, B. P. Nelson, Karl Rohberg, Charles S. Semsen, James Hayes, C. H. Anderson, Harry Walton, W. Saaris, Gust Anderson, Gust Saarinen, Wm. R. Reilly, Louis Norloff, John McDonald, Wilson Bangay, Robert White, George Dolan, John Lewis and Sett Strand shall have and recover from steamship "Newport", her engines, boilers, tackle, etc., George McKinnon, master of said vessel, and Pacific Mail Steamship Company, a corporation, respondents, and from Pacific Mail Steamship Company, a corporation, claimant, for all loss and damage suffered by said libelants or any of them by reason of said collision;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Pacific Mail Steamship Company, a corporation, cross-libelant herein, shall take nothing by its cross-libel and that the same be, and is hereby, dismissed;

IT IS FURTHER ORDERED that this cause be, and the same is hereby referred to Francis Krull, Esq., United States Commissioner for the Northern District of California, at San Francisco, California, to take testi-

mony and ascertain the amounts due the libelants and to report the same to this court with all convenient speed.

Dated: Los Angeles, California, September 15th, 1924.

Paul J. McCormick
United States District Judge

Decree entered and recorded 9/15/24. Chas. N. Williams, clerk, by Louis J. Somers, deputy clerk.

[Endorsed]: No. 1202 Civil. In the Southern Division of the United States District Court in and for the Southern District of California. In Admiralty. Henry Wilson, et al., libelants, vs. Steamship "Newport," etc., et al., respondents. Pacific Mail Steamship Company, a corporation, Claimant. Pacific Mail Steamship Company, a corporation, Cross-Libelant, vs. Henry Wilson, et al., Cross-Respondents. Interlocutory Decree and Order Referring Cause to Commissioner. Due service and receipt of a copy of the within "interlocutory decree and order referring cause to commissioner" is hereby admitted this 12th day of September, 1924. Farnham P. Griffiths. McCutchen, Olney, Mannon & Greene Proctors for Respondents, Claimant and Cross-Libelant. Filed Sep. 15, 1924, Chas. N. Williams, Clerk. By Louis J. Somers, deputy clerk. Andros and Hengstler, Proctors for Libelants. Kohl Bldg. San Francisco, Cal.

[Title of Court and Cause.]

FINAL DECREE

This cause having come on regularly for hearing in open court on the 6th day of May, 1924, libelants and

cross-respondents being represented by Messrs. Andros & Hengstler and Frederick W. Dorr, Esq., and cross-libelant, respondents and claimant being represented by Messrs. McCutchen, Olney, Mannon & Greene, and Russell A. Mackey, Esq., and the Court having considered the evidence, and the oral arguments of counsel, and the authorities submitted by counsel, and having filed its memorandum opinion finding and holding that the collision between the steamship "Newport" and the steamship "Svea", which occurred on the 29th day of November, 1922, was due to the gross negligence and plain fault of said steamship "Newport", and that said steamship "Newport" was solely at fault for said collision, and liable for all damages caused thereby, and that the steamship "Svea' was not at fault for said collision;

And thereafter an interlocutory decree having been made and entered herein, whereby and wherein it was ordered, adjudged and decreed that the libelants should have and recover from the steamship "Newport", her engines, boilers, tackle, etc., George McKinnon, master of said vessel, and Pacific Mail Steamship Company, a corporation, respondents, and from Pacific Mail Steamship Company, a corporation, claimant, for all loss and damage suffered by said libelants or any of them by reason of said collision; and that Pacific Mail Steamship Company, a corporation, cross-libelant herein, should take nothing by its cross-libel, and that the same be dismissed; and that this cause be referred to Francis Krull, Esq., United States Commissioner for the Northern District of California, at San Francisco, California, to take testimony and ascertain the amounts due the

libelants and to report the same to this Court with all convenient speed;

And thereafter, in pursuance of said interlocutory decree, the report of said commissioner having been presented and filed herein, whereby and wherein said commissioner did find and report that there was due to the libelants from the respondents, as follows:

To the owners of the steamer "Svea" for and on account of the damages sustained by reason of the collision herein the sum of $75,154.53; and the costs incurred in defending the salvage action entitled Andrew F. Mahoney, Thomas Crowley, et al., vs. Henry Wilson, et al., No. 18489 in the United States District Court for the Northern District of California, Southern Division, as said costs may be taxed; together with interest at the rate of seven per cent. per annum from November 29, 1922, the date of the collision; and

To Karl Rohberg, libelant, for loss of personal effects and clothing the sum of $250.00

To James Hayes, libelant, for loss of personal effects and clothing the sum of 360.00

To Charles S. Semsen, libelant, for loss of personal effects and clothing the sum of 80.00

To William B. Reilly, libelant, for loss of personal effects and clothing the sum of 250.00

To Harry Walton, libelant, for loss of personal effects and clothing the sum of 50.00

To C. H. Anderson, libelant, for loss of personal effects and clothing the sum of 250.00

And thereafter exceptions having been filed to the report of said commissioner by the libelants and by the respondents and claimant, and said exceptions having

come on for hearing, and having been argued by counsel and submitted to this Court for decision, and thereafter, on the 19th day of February, 1926, this Court having made and entered its order overruling the said exceptions to said report and ordering that said report be confirmed;

NOW, THEREFORE, on motion of Andros, Hengstler & Dorr, proctors for libelants,

IT IS ORDERED, ADJUDGED AND DECREED that the libelants Henry Wilson, F. A. Wilson, W. T. Wilson, Lucy W. Kendall, A. Kendall, A. J. Patterson, Jas. Pennycock, O. Bertelsen, J. S. Hutchinson, E. C. Hutchinson, C. E. Allen, A. B. Johnson, Katie M. Johnson, Mariett Johnson, A. Hansen, Clara A. Buchholz, H. W. Jackson, L. Everding, Frank Graham, Margaret A. Wilson, Trustee, Carrie E. Wilson, J. H. Wilson, Margaret A. Wilson, Wm. C. Wilson, James Graham and B. P. Nelson do have and recover from the steamship "Newport", her engines, boilers, tackle, etc., George McKinnon, master of said vessel, respondents, and Pacific Mail Steamship Company, a corporation, respondent and claimant, the sum of $75,154.53, together with interest thereon at the rate of seven per cent. per annum from the 29th day of November, 1922, apportioned according to their respective shares in the steamship "Svea", as follows:

	Share:	Amount:	Interest:	Total:
To Henry Wilson	16/64	$18,788.62	$4,310.88	$23,099.50
To F. A. Wilson	3/64	3,522.87	808.29	4,331.16
To W. T. Wilson	2/64	2,348.58	538.86	2,887.44
To Lucy W. Kendall	1/64	1,174.29	269.43	1,443.72

To A. Kendall	2/64	2,348.58	538.86	2,887.44
To A. J. Patterson	1/64	1,174.29	269.43	1,443.72
To Jas. Pennycock	1/64	$ 1,174.29	$ 269.43	$ 1,443.72
To O. Bertelson	2/64	2,348.58	538.86	2,887.44
To J. S. Hutchinson	2/64	2,348.58	538.86	2,887.44
To E. C. Hutchinson	2/64	2,348.58	538.86	2,887.44
To C. E. Allen	2/64	2,348.58	538.86	2,887.44
To A. B. Johnson	2/64	2,348.58	538.86	2,887.44
To Katie M. Johnson	1/64	1,174.29	269.43	1,443.72
To Mariett Johnson	1/64	1,174.29	269.43	1,443.72
To A. Hansen	3/64	3,522.87	808.29	4,331.16
To Clara A. Buchholz	2/64	2,348.58	538.86	2,887.44
To H. W. Jackson	2/64	2,348.58	538.86	2,887.44
To L. Everding	1/64	1,174.29	269.43	1,443.72
To Frank Graham	1/64	1,174.29	269.43	1,443.72
To Margaret A. Wilson, Trustee,	4/64	4,697.16	1,077.72	5,774.88
To Carrie E. Wilson	1/64	1,174.29	269.43	1,443.72
To J. H. Wilson	1/64	1,174.29	269.43	1,443.72
To Margaret A. Wilson	4/64	4,697.16	1,077.72	5,774.88
To Wm. C. Wilson	2/64	2,348.58	538.86	2,887.44
To James Graham	1/64	1,174.29	269.43	1,443.72
To B. P. Nelson	4/64	4,697.15	1,077.72	5,774.87
Total		$75,154.53	$17,243.52	$92,398.05

and said libelants do also have and recover the costs incurred in defending the salvage action entitled Andrew F. Mahoney, Thomas Crowley, et al., vs. Henry Wilson, et al., No. 18489 in the United States District Court for the Northern District of California, Southern Division, as said costs may be taxed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following named libelants do have and recover from the steamship "Newport", her engines, boilers, tackle, etc., George McKinnon, master of said vessel, respondents, and Pacific Mail Steamship Company, a corporation, respondent and claimant, as follows:

Karl Rohberg—the sum of	$250.00
with interest at seven per cent. per annum from November 29, 1922	57.33
Total	$307.33
James Hayes—the sum of	$360.00
with interest at seven per cent. per annum from November 29, 1922	82,60
Total	$442.60
Charles S. Semsen—the sum of	$ 80.00
with interest at seven per cent. per annum from November 29, 1922	18.33
Total	$ 98.33
William B. Reilly—the sum of	$250.00
with interest at seven per cent. per annum from	

November 29, 1922	57.33
Total	$307.33
Harry Walton—the sum of	$ 50.00
with interest at seven per cent. per annum from November 29, 1922	11.43
Total	$ 61.43
C. H. Anderson—the sum of	$250.00
with interest at seven per cent. per annum from November 29, 1922	57.33
Total	$307.33

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the libelants Henry Wilson, F. A. Wilson, W. T. Wilson, Lucy W. Kendall, A. Kendall, A. J. Patterson, Jas. Pennycock, O. Bertelsen, J. S. Hutchinson, E. C. Hutchinson, C. E. Allen, A. B. Johnson, Katie M. Johnson, Mariett Johnson, A. Hansen, Clara A. Buchholz, H. W. Jackson, L. Everding, Frank Graham, Margaret A. Wilson, Trustee, Carrie E. Wilson, J. H. Wilson, Margaret A. Wilson, Wm. C. Wilson, James Graham, B. P. Nelson, Karl Rohberg, Charles S. Semsen, James Hayes, C. H. Anderson, Harry Walton, W. Saaris, Gust Anderson, Gust Saarinen, Wm. R. Reilly, Louis Norloff, John McDonald, Wilson Bangay, Robert White, George Dolan, John Lewis and Sett Strand do have and recover from the steamship "Newport," her engines, boilers, tackle, etc., George McKinnon, master of said vessel, respondents, and Pacific Mail Steamship Company, a corporation, respondent and

claimant, the costs of said libelants incurred herein, to be taxed at $807.04; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, if this decree shall remain unsatisfied for ten days after the entry thereof and notice to the proctors for the respondents and claimant, the stipulators for costs and value on the part of the claimant of said steamship "Newport", her engines, boilers, tackle, etc., shall cause the engagements of their stipulations to be performed, or show cause within four days why execution should not issue against them, their lands, goods and chattels for the amounts, together with interest thereon set forth in this decree.

Dated: March 10th, 1926.

Paul J. McCormick
United States District Judge.

APPROVED AS TO FORM, AS PROVIDED IN RULE 44 Farnham P. Griffiths, McCutchen, Olney, Mannon & Greene, Proctors for Respondents and Claimant.

Decree entered and recorded March 10, 1926. Chas. N. Williams, clerk, By Louis J. Somers, deputy.

[Endorsed]: No. 1202 Civil. District Court of the United States, for the Southern District of California, Third Division, In Admiralty. Henry Wilson, et al., libelants, vs. Steamship "Newport," etc., respondents. Pacific Mail Steamship Company, a corp., claimant. Final Decree. Filed Mar. 10th, 1926. Chas. N. Williams, Clerk, by Louis J. Somers, deputy. Andros, Hengstler & Dorr, Proctors for Libelants, Kohl Building, San Francisco, Cal.

[Title of Court and Cause.]

MEMORANDUM OPINION

Suits in Admiralty by cross libels arising out of a collision which occurred in the open and uninterrupted sea of the Pacific Ocean at a point twelve miles westerly from Point Buchon, between the Steamship "Newport" and the Steamship "Svea" in which the "Newport" collided with and ran into the "Svea" at about midships, causing the "Svea" to completely overturn.

The collision happened at about 9:53 o'clock on the morning of November 29, 1922. The weather was clear and serene. The sea was placid and visibility was perfect for at least ten miles.

The "Newport" is an iron steamship of about 2643 gross tons burden, engaged in passenger traffic between San Francisco, California and Central American ports. At the time of the collision she was bound for Central America and was and had been for about thirty minutes prior to the contact sailing at about ten knots per hour on a course south 79 east (magnetic).

The "Svea" is a wooden steam schooner of about 618 gross tons, engaged in the lumber carrying trade between Gray's Harbor, Washington, and southern California ports. At the moment before collision, and for one half hour previous she was bound for San Francisco on a course N. W. by N. ½ N. (magnetic) at a speed of about seven and one-half knots per hour. She was bearing about three points on the starboard bow of the "Newport".

It is conceded by all parties that the courses of the two steamers at and prior to the collision were such

that the "Svea" was the privileged vessel and the "Newport" the burdened ship. Such being the admitted case, under the rules it was the prime duty of the "Newport" to keep out of the "Svea's" way. The "Newport" frankly admits negligence and liability but invokes and seeks to have this Court apply the half damage rule because it claims that the "Svea" was guilty of contributory negligence in adhering to the rule too stringently.

The issue for decision, therefore, is whether the Steamer "Svea" was justified in proceeding with her course and speed until the collision.

The general rule which is applicable here is announced in the "Delaware" 161 U. S. 459:

> "That the preferred steamer will not be held at fault for maintaining her course and speed so long as it is possible for the other to avoid her by porting, or until she has some distinct indication that the other vessel is about to fail in her duty."

From a careful and extended consideration of the evidence in this suit, I am of the opinion that in this instance the "Svea" should not be held liable for strict compliance with the rule aforesaid. It is argued by Proctors for the "Newport" that because both vessels from about 9:20 A. M. until the collision and over a distance of approximately eight miles were clearly visible to each other, and inasmuch as the bearing of the "Newport" did not change or deviate, such facts in themselves were definite proof that the vessels would inevitably come into collision unless one or the other modified her course or speed, but under the evidence I am unable to say at what point, if ever, it became clear to the "Svea" that the "Newport" would not yield

the right of way or would fail in her bounden duty to pass astern of the "Svea". If the navigator of the "Svea" had breached the rule and the collision had still occurred it would be very difficult for the "Svea" to absolve herself under the law. The "Newport" was being navigated in a grossly negligent manner, in fact, it reasonably appears that there was no one at the helm or upon the bridge or in the pilot house of the "Newport" or, in fact, a competent or any lookout on watch thereon until an instant before the collision when the Master of the "Newport" arrived on the bridge thereof. But I do not believe that the mere existence of these facts themselves were a clear indication to the Master of the "Svea" that the "Newport" would fail to perform the duty which the law enjoined upon her of keeping clear of the "Svea". The "Svea" first realized that the "Newport" was not going to do anything when the ships were but two hundred feet apart, and nothing could thereafter have been done by the "Svea" which would have prevented or avoided the collision with the "Newport". I am satisfied from the evidence and from the testimony of the Master of the "Svea" that he was always uncertain as to the activities of the "Newport" and as to those in charge of her navigation, and if in such a situation he were called upon to make an assumption as to what the "Newport" would do, he would, in my judgment, be required to assume that a burdened steamship of her proportions carrying many passengers and proceeding at a speed between nine and ten knots per hour in the open sea of the Pacific Ocean was properly manned and officered, and that he would be required to continue such an assumption until he had

clear and unmistakable indication or manifestation to the contrary. It appears that when the ships were two miles apart the "Svea" blew one whistle and received no acknowledgement or response from the "Newport", and that again when one mile apart the "Svea" blew four whistles with the same result and that yet again when about two hundred feet apart four blasts were again blown by the "Svea" which were also unheeded by the "Newport". It is claimed that these facts must have conveyed to the Master of the "Svea" who was upon the bridge during the entire time that the "Newport" did not intend to comply with the rules of the road. I do not think that such deduction necessarily follows. The "Svea" was required to hold her course and speed as long as it was possible for the "Newport" to avoid her by porting, or until she had some distinct notification that the "Newport" was about to fail in its duty. The evidence of the Master of the "Svea" convinces me that he had no distinct, clear and unmistakable indication that the "Newport" would fail in her duty until he had rightfully reached a point where he was in extremis and where probably a collision was unavoidable, and I am also satisfied that he then exercised his best judgment, to strictly comply with the rule. This is all that he was required to do. If he had guessed as to the course or maneuvers of the "Newport" he might have guessed wrong and in such a situation he would probably have been accountable for deviating and departing from the rule of the road, which required him to keep his course and speed. I do not believe that he is required to or should be permitted to guess in such a situation and emergency, for if while lawfully navigating a privileged

ship and duly observing the rules of the road, a Master is placed in extremis by the gross negligence of the other ship, he will not be held accountable for a wrong decision if he exercises his best judgment in the light of things and conditions known to and seen by him at the time.

I am not convinced that if the "Svea" had stopped and reversed her engines or changed her course, when the "Newport" argues that she should have done so, the collision could have been avoided. The evidence rather indicates to my mind the contrary. It is the law clearly and uniformly established by decisions that it was incumbent upon the "Newport" where her own fault is so gross and so plainly shown as it is here, to prove affirmatively and conclusively the fault of the "Svea". "The Binghamton" 271 Federal 68. This in my opinion she has not done. As was said by the Court in the "Haida" 191 Federal 623:

> "It must always be a close question when the time comes at which the burdened vessel can by no possibility do her duty and that time is doubly hard for the privileged vessel to find for she has no right to change her course and speed until then."

Although argument may now show by subsequent events that stopping or backing or changing course on the part of the "Svea" would have avoided collision, it does not prove negligence. "The Musconetcong" 255 Federal 675.

I have adverted to the contention of the Proctors for the "Newport" that because the Master of the "Svea" looking at the bridge and pilot house of the "Newport" thru his glasses before he blew the first four blasts saw

no activity thereon or therein, he had thereby received a clear indication that the "Newport" would fail in her duty as the burdened ship, but I cannot agree with this contention. The Master of the "Svea" testified he could not definitely see into the pilot house nor could he see the telegraph. He said that altho he looked at the "Newport's" bridge and saw no one, that he did not know that there was or was not anyone there, and merely because he was unable to see anyone on the bridge of the "Newport" he was not thereby justified in assuming that there was no one there and that the ship was being navigated without pilot, officer, or lookout, and was not thereby justified in disobeying the rule which required him to maintain his course and speed until he had distinct indication that the "Newport" was about to fail in her duty.

I have concluded that this collision was due to the gross negligence and plain fault of the "Newport" as alleged in the amended libel and answer to the cross libel and that the plea of contributory negligence on the part of the "Svea", as claimed in the answer to amended libel and the cross libel, has not been sustained by a preponderance of the evidence. The half damage rule is not applicable to this case. Proctors for libelants will prepare and serve upon Proctors for respondents an appropriate decree in accordance with this Memorandum Opinion and pursuant to the stipulation entered in to in open Court at the time of trial as to the measurement and assessment of damages hereunder and will then present the same to the Court for consideration.

Paul J. McCormick
U. S. District Judge Southern
District of California

Dated this 10th day of September, 1924.

[Endorsed]: No. 1202 Civil. United States District Court, Southern District of California. Henry Wilson, F. A. Wilson, W. T. Wilson, Lucy W. Kendall, A. Kendall, A. J. Patterson, Jas. Pennycock, et al., libelants and cross respondents vs. Steamship "Newport" her engines, boilers, tackle, etc., J. McKinnon, Master of said vessel and Pacific Mail Steamship Company, a corporation, owner of said vessel, cross libelants, respondent and claimants. Memorandum Opinion. Filed Sep. 10, 1924. Chas. N. Williams, clerk, by Louis J. Somers, deputy clerk.

[Title of Court and Cause.]

LOS ANGELES, CALIF., TUESDAY, MAY 6, 1924. 10:00 A. M.

THE COURT: 1202 C., Henry Wilson, et al., versus Steamer "Newport".

MR. DORR: Ready, your Honor.

MR. MACKEY: Ready, your Honor.

THE COURT: Proceed.

MR. DORR: If the court please, this action arises out of a collision between two steamships, the Steamship "Svea", owned by a number of owners, Messrs. Wilson Brothers being the principal owners, and the Steamship "Newport", owned by the Pacific Mail Steamship Company. I appear in behalf of the owners of the "Svea", and Mr. Vermille, of the office of Overton, Lyman & Plumb, is associated with me. Mr. Mackey, of Messrs. McCutcheon, Olney, Mannon & Greene, appears on behalf of the owners of the "Newport".

The "Svea" was a steamer of the type commonly seen on this Coast, a steam schooner in the lumber trade, running from the northern ports into the ports of Southern California, and at the time of the collision in question was northbound empty, having discharged her cargo, I think, at Ventura. The Steamer "Newport", which is a somewhat larger vessel, was a passenger vessel on a regular run of the Pacific Mail Steamship Company between San Francisco and the ports of Central America, and at the time of the collision was southbound. The collision occurred off shore, about 10 or 15 miles off shore, off the coast of San Luis Obispo County, off what is known as Point Buchon. It was a clear morning, about 10 o'clock in the morning, the actual time of the collision being 9.53. It was bright, sunny and clear, and some witnesses will testify they could see 20 miles. The collision occurred on November 29, 1922. In order to make the situation clear in making my statement, I have prepared a sketch, not for the purpose of introducing it in evidence, but for the purpose of illustrating the position of the two vessels. This (indicating) represents the position of the "Svea" one-half hour before the collision. The testimony shows—there have been a number of depositions taken, that she was going at the rate of about seven and one-half miles an hour. She was holding this course in a northerly direction, a northwesterly direction, and this distance is three and three-quarter miles, which distance she would travel at that rate in one-half hour. This represents the position of the "Newport" one-half hour before the collision. According to the statements of her master she was making about nine knots, and this distance repre-

sents four and one-half miles, which distance she would travel in half an hour. The "Svea" proceeding on this course sighted the "Newport" somewhere when she was in this locality. The "Newport" at that time was about eight miles away. The "Svea" continued to hold that course and speed up until the time of the collision.

Under the rules of the road a vessel in the position of the "Svea", having the other vessel on the left side, or, as they say in nautical terms, on the port hand, has the right-of-way, is the privileged vessel, and must, under the rules, hold her course and speed. On the other hand, a vessel in the position of the "Newport", having the other vessel on her right side, or her starboard side, is the burdened vessel and must keep out of the way of the vessel which has the right-of-way, and must, if necessary, slacken her speed, stop, and reverse in order to avoid crossing ahead. The testimony will show that when the "Svea" proceeded along about the point I am now indicating, the captain and the mate, who were both on the bridge observing the "Newport" approaching down this course,—and at that time she was between two and three miles away, began to wonder what the "Newport" was going to do, and there was some remarks passed between them. They proceeded a little farther, say a half a mile, to a point where the vessels had approached to within less than two miles of each other, and the "Svea" blew one blast on her whistle, which would indicate, under the rules, that she was holding the course which she was required under the rules to hold. She heard no answer from the "Newport" and she proceeded a little farther, about three-eights of a mile, and blew four short blasts, a signal which is an alarm or

danger signal, to call the attention of the "Newport" to her signals. She proceeded a little further, a distance of about three-tenths of a mile, approximately, which running took about a minute and a half, and sounded the danger signal again, and still no answer from the "Newport", the "Newport" approaching all the time, and at that point she was about a half a mile away. After the second alarm signal the captain and the mate of the "Svea" began to consider the danger of a collision, the "Newport" not having changed her bearing, and they began to consider what they should do.

These marks on the sketch, representing the vessels, are very much larger than the scale and, of course, do not represent the actual size of the ships. This is the distance here, a half a mile between the two vessels, approximately.

At that time the captain, who had charge of the navigation, considered whether or not he was the burdened vessel or the privileged vessel and obliged under the law to hold his course and speed, or whether he should take some action by turning or stopping or backing in order to avoid the "Newport", which did not seem to be changing its course. There was still plenty of time at that time if the "Newport" would swing a slight helm to swing astern of the "Svea", which he was obliged to do, and the captain of the "Svea" was considering that if the "Newport" did not swing, which under the rules he was obliged to do, there would be a collision as a certainty, and whether or not he would be at fault, so he decided the only thing to do was for him to hold his speed, and he did hold his speed until he got up to where a collision was inevitable. He then

put his helm hard to port, which had a tendency to swing the vessel to the right or away from the "Newport". That action was taken, I say, at the time of the collision in order to avoid a direct blow, if possible. The "Newport" struck the "Svea" amidships, about half way between her bow and stern, cutting deeply into the side of the vessel, and for some distance below her water line, and then bumped along the side and drifted clear. The "Svea's" engines were not stopped until after the collision. Shortly after the collision the vessels were together for a moment or two, then the "Newport" started off to the south. There was apparently no damage to her bow. The "Svea" was smashed in and the water seemed to be running out. The "Newport" started off to the south and the "Svea" turned around and attempted to follow the "Newport". Someone on the "Newport" had sung out to the "Svea" for the "Svea" to stand by, which they attempted to do, but when the "Newport" started off the "Svea" attempted to follow them, but the water was coming in so fast that it was found necessary to swing the "Svea" into the beach about 10 miles away. Before the "Svea" got to the beach the water came into the engine room and put out the fires and it was necessary to anchor the vessel about two miles off shore. The crew stood by for several hours and the vessel continued to take water and she finally listed over on her side and the crew were picked up by a vessel that was standing by. During the night the "Svea" turned completely over and it was almost a complete loss. A day or two after that one of the vessels of the company came along there and picked up the "Svea", and with the aid of a coast

guard vessel, was able to tow her upside down from that point off San Luis Obispo County, to San Francisco, a most remarkable feat. When she was towed into San Francisco she was righted by means of derricks and placed in a dry dock and was subsequently repaired, and is now back on the run. The owners of the "Svea" filed a libel against the "Newport", and against the owners and the master of the "Newport", to recover damages in the sum of $151,000. This libel has been answered by the Pacific Mail Steamship Company and they have filed a cross libel against the owners of the "Svea", claiming damages from the owners of the "Svea" in the sum of $55,000. This has also been answered, and these libels and the cross libels make up the issues in the case.

A great many facts on both sides are admitted: The ownership of the "Svea" by the various part owners is admitted; the specifications of the "Newport" are admitted; it is admitted that Captain McKinnon, who is present in court, was master for the "Newport" at the time of the collision; it is admitted that the "Newport" ran into the "Svea"; it is denied by the Pacific Mail Steamship Company on information and belief that the "Svea" was badly damaged and she capsized after the collision; it is admitted that the weather was clear at the time of the collision; it is denied that the "Svea" maintained this course that I have pointed out to your Honor for approximately 38 minutes prior to the collision; it is admitted that at all times the "Newport" was on the port bow, or left hand side, of the "Svea", and that the "Svea" was at all times on the starboard bow of the "Newport"; it is denied that the collision was

entirely due to the fault of the "Newport"; it is denied that the "Newport" had incompetent officers on watch, and incompetent helmsman and incompetent lookout.

In paragraph 7 of the libel I wish to call your Honor's attention particularly to some facts which are admitted by the owners of the "Newport". Beginning at the fourth allegation at the bottom of page 4 of the libel: "That said Steamship 'Newport' at, and immediately prior, to the time of said collision, was violating Article 19 of the International Rules for preventing collisions, in that said vessel having the Steamship 'Svea' on the starboard of said Steamship 'Newport' did fail to keep out of the way of said Steamship 'Svea'."

Also the fifth paragraph on page 5: "That said Steamship 'Newport' at, and immediately prior, to the time of said collision was violating Article 22 of said International Rules for preventing collisions, in that it failed to pass astern of said Steamship 'Svea'."

Paragraph 6: "That said Steamship 'Newport' at, and immediately prior, to the time of said collision was violaitng Article 23 of said International Rules for preventing collisions, in that while approaching said Steamship 'Svea', and while it was obliged by the said International Rules to keep out of the way of said Steamship 'Svea', it failed to slacken its speed, and did fail to stop, and did fail to reverse its engines."

These allegations are specifically admitted by the answer and by the cross libel filed on behalf of the Pacific Mail Steamship Company on page 4 of their answer, paragraph 7, beginning at line 18, it is stated as follows: "Admit that said Steamship 'Newport' violated Articles 19, 22 and 23 of the International Rules for preventing collisions, as alleged in sub-divisions num-

bered fourth, fifth and sixth of said Article VII of the libel."

For your Honor's information I have a copy of the official publication of the International Rules.

THE COURT: I have it here, but I will take that if it is in more concise form.

MR. DORR: It is more concise and in parallel columns. The answer further denies neglect in other respects; denies that the mate and master of the "Svea" signaled to the "Newport" for assistance; admits that the "Newport" failed to stand by the "Svea"; denies that the "Svea" was in a badly damaged and sinking condition; admits that the "Newport" failed to give the "Svea" her name and other things required by the statute in case of collision, that is provided for in the Statute of 1890; denies, as I said, that the "Newport" failed to stand by.

Attached to our libel are certain interrogatories to which certain very material admissions are made in the answer. Referring to the eighth interrogatory: "What changes of speed, if any, in the engines of the Steamship 'Newport' were made after 9:30 a. m. on the 29th day of November, 1922, and prior to the time of the collision with the Steamship 'Svea'? A The engines were reversed from full ahead to full astern."

Interrogatory 9: "What changes of course, if any, were made by the Steamship 'Newport' after 9:30 a. m. on the 29th day of November, 1922, and prior to the time of said collision? A The helm was put hard astarboard."

It does not state in answer to those interrogatories that the change of helm and speed occurred. The

thirteenth interrogatory: "When was the Steamship 'Svea' first sighted, if at all, by those in charge of navigation of the Steamship 'Newport'? A About 9:45 a. m." That would be about 8 minutes before the collision, which occurred at 9:53, whereas the testimony of some of the officers which we shall introduce will show that the "Newport" was in sight for more than half an hour. The fifteenth interrogatory: "Was not the 'Svea' at all times on the starboard bow or starboard side of the 'Newport'? A Yes."

The seventeenth interrogatory: "Did the 'Newport' hit the port side of the 'Svea' about midships? If not, state where the 'Newport' did hit the 'Svea'. A Yes."

The eighteenth interrogatory: "What assistance, if any, was rendered by the 'Newport' to the 'Svea' after the collision? A. None. None was requested nor apparently needed."

The twenty-third interrogatory: "What whistle signals, if any, were made by either vessel at the time of the collision, and prior thereto while said vessels were within hearing of each other? A One, by the 'Newport'.

The cross libel which has been filed by the Pacific Mail Steamship Company against the owners of the "Svea" admits in paragraph 3 that *that* the Steamship "Newport" violated articles 19, 22 and 23. That is to correspond to the admissions in their answer, and they allege on information and belief that the collision was at least not due solely to said faults but was proximately caused or contributed to by faults on the part of the "Svea", in that she failed to alter her course; that she violated article 28 in failing to blow proper signals; that

in approaching the "Newport" which had disregarded her signals, she failed to slacken speed, and that she violated article 27 in failing to reduce her speed after receiving indications from the "Newport" that she intended to do nothing.

Damages are claimed from the owners of the "Svea" in the amount of $55,000, and in accordance with the rules of admiralty a stay bond on the cross libel was demanded of us in the sum of $70,000, although in view of the admissions of fault on the part of the "Newport" and the manifest character of the damage on the part of the "Svea", there could be no possible recovery on behalf of the "Newport". We called that matter to the attention of counsel and they voluntarily reduced the bond to $10,000 from $70,000, which bond we filed in order to proceed with our libel.

The admissions on the part of the "Newport" show plainly that the "Newport" was at fault, and, in fact, we might well rest at the outset and let the owners of the "Newport" assume the burden which they have of showing that the "Svea" was at fault.

There are some issues, however, which are disputed in regard to the course and maneuvers of the "Svea" and in regard to the damage, and in order to make our story complete, I will introduce such evidence as we have, which will be very brief. I will state that we have agreed in this case in accordance with the custom in admiralty cases that the decree of the court need not go into the question of damage, but that the matter of damage may be referred to a commissioner to take testimony and ascertain the amount of the damage after the interlocutory decree is rendered. That is correct?

MR. MACKEY: Yes, that is the usual matter of reference, which is reported back to the court.

THE COURT: I would like to ask you whether there is any agreement on this principle of law or whether it is a correct principle in admiralty law: This rule 27 seems to provide for the acceptance of the rules of the road in admiralty cases, and I wanted to ask if the courts in construing that section adopted a rule similar to the doctrine of the last clear chance in negligence cases.

MR. DORR: Not exactly. The situation which is presented in this case has been squarely passed upon by the Supreme Court of the United States in the case of the Delaware. That is reported in 161 U. S., page 459; 40 Law. Ed., page 771. The effect of proving fault upon the part of the "Svea" would not relieve the "Newport" of any liability for damages, as it might in a law action. There is a different rule in admiralty. The damages are divided in case of mutual fault, so that if the "Svea" and the "Newport" were both at fault, the "Svea" could recover from the "Newport" but one-half of the "Svea's" damage, from which is also deducted one-half of the "Newport's" damages.

THE COURT: The rule of contributory negligence is not applicable.

MR. DORR: Not as a complete defense. It cuts down the amount and the nature of the division of the damages. I wish to offer in evidence in behalf of the owners of the "Svea", the libelants and cross respondent, the depositions of Karl Rohberg, master of the Steamship "Svea", and Charles S. Semsen, chief mate of the Steamship "Svea", and John McKeown, third mate of the Steamship "Newport". The deposi-

tions cover a great many points that have been admitted in the pleadings. I will not read them entirely, but I wish to call your Honor's attention briefly to some testimony by the mate and the master of the "Svea". I will state that the claim of the Pacific Mail Steamship Company, it is no secret, they have pleaded it in their pleadings upon which they hope to recover, that the "Svea" having known the intention of the "Newport" and that the "Newport" was not obeying the rules of the road, the "Svea" should not have continued to hold her course and speed, but should have turned and stopped, and taken some action to avoid the collision.

THE COURT: In other words, invoked the application of that rule which I mentioned.

MR. DORR: Yes, your Honor. Referring to the testimony of the mate, Mr. Semsen, of the "Svea", on cross examination, on page 26, he testified as follows:

"Q If you had slowed down when you blew the first four blasts signal, what would have happened? A Well, if the other man went where he ought to go, he would have gone right into us and we would have been blamed for everything."

Turning to the testimony of Karl Rohberg, master of the "Svea", beginning at page 47, he testified as follows:

"Q You saw the 'Newport' about eight miles away, and from that time on until the time of the collision her bearing stayed the same? A Yes.

"Q When did you first have a doubt as to whether she was going to keep out of your way? You expected her to get out of your way, according to the rules of the road, did you? A Yes, sir.

"Q When did you first have a doubt that she was going to do that? A Just when we were about one

hundred feet apart, I guess. We were almost ready to have a collision, and at the same time the mate sung out 'Hard aport'.

"Q When you blew the second distress signal, did it not occur to you that there was something wrong on the 'Newport'? A No, I don't think so.

"Q You didn't see anybody on the bridge, did you? A I didn't see anybody, but I didn't know whether there was anybody there, or there was not anybody there.

"Q You couldn't see anybody there? A No.

"Q Didn't it occur to you that there was something wrong on her then? A No, it did not occur to me that way.

"Q What did you blow your distress signal for? A To call his attention to me. It did not look good to me then, the way things looked.

"Q You didn't think then he was going to keep clear of you? A No, but I just called his attention to it to keep clear of me.

"Q And you knew if he kept on you would come together? A No, I didn't know that, but it looked doubtful to me."

There is a lot more testimony along that line. Turning over to page 59, on redirect examination: "Q There have been some questions asked by counsel in regard to avoiding a collision by stopping after you blew your last four whistles; those answers that you made to those questions are based on the assumption, are they not, that the 'Newport' would hold its course and speed? A Yes, sir.

"Q Did you, in that situation, consider whether or not you should stop, or back, or whether you should hold your course and speed? A I did consider it.

"Q And what did you decide? A I decided to go ahead, that she is going to change.

"Q Why did you decide to go ahead? A Because I had the right-of-way.

"Q And what did you think that the other man might do? A That the other man might port his helm, or stop and back, or clear me; I did not consider which way, but I considered that he would clear me in some shape or other.

"Q What would have happened if you had slackened your speed, or stopped your engines, or reversed your engines in an effort to avoid a collision, and at the same time the 'Newport' had ported its helm? A There would have been a collision.

"Q And that was what the 'Newport' was obliged to do under the law, wasn't it, either that or some other step to avoid the collision? A Yes, sir.

"Recross Examination

"Q Your whole idea was that you were to hold your course and speed? A I was considering about whether I should take action.

"Q When did you consider that? A After the second four blasts.

"Q How long after, or was it at the same time? A Probably half a minute after, just a little after blowing the second four blasts and sizing up the things.

"Q As a matter of fact, you were thinking about it at the time you were blowing your four blasts signals? A No, after blowing it.

"Q How far apart were the vessels when you commenced to consider whether to stop, or to reverse, or to do something yourself? A Over a quarter of a

mile. I could only come to the conclusion that if I acted there would be some mistake, and so I came to the conclusion to keep my course and see.

"Q You were going to go right through with your course and speed, regardless of what he did? A I didn't know what he was going to do. I considered that if I acted, and if he acted, there would be a collision sure.

"Q When you began to figure on what you should do, you had some doubt as to what he was going to do, you had some doubt as to whether he was going to keep out of your way? A Yes.

"Further Redirect Examination

"Q It was only a doubt, though, wasn't it, Captain? A Only a doubt. There was a chance for him to go clear.

"Q You knew what his duty was, under the circumstances, didn't you? A I knew what his duty was, yes."

The deposition of the third mate of the "Newport", the officer who was on watch at the time of the collision, which was also taken by us, is very brief and simply brings out the fact that the "Svea" was at all times on the starboard side of the "Newport" and that he saw her first about 9:45, which was 8 minutes before the collision, and about one mile off, and that the weather conditions were fine and clear.

Now, I will call Mr. Hayes, chief engineer of the "Svea".

(Testimony of James Hayes.)

JAMES HAYES,

called as a witness on behalf of the libelants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DORR:

Q Mr. Hayes, were you chief engineer of the Steamship "Svea" at the time of the collision?

A Yes, sir.

Q That was on November 29th, 1922?

A Yes, sir.

Q What license did you hold at that time, Mr. Hayes?

A Unlimited chief, sir.

Q Just speak up a little bit louder.

A Unlimited chief, sir.

Q How many engineers did you have besides yourself on the "Svea"?

A Two besides myself.

Q Two assistants?

A Two assistants.

Q Where were you at the time of the collision?

A I was in my room, sir, laying down reading, in my underwear.

Q Where was your room situated?

A On the port side, sir.

Q Upon deck?

A Up on deck, sir, on the poop deck.

Q Who was on watch in the engine room?

A The first assistant engineer, sir.

Q What was his name?

A William Reilly.

Q What was the name of the other assistant?

(Testimony of James Hayes.)

A Louis Norloff.

Q What time did you get off watch?

A 8 a. m.

Q That morning?

A Yes, sir.

Q What were the weather conditions?

A Just the same as they are now, except a little northwest wind.

Q Fine, clear, and sunshiny?

A Yes, sir.

Q How was your attention first called to the presence of another vessel, Mr. Hayes?

A I sleep on the port side and my door was on the hook. I was laying in my underwear reading, and along about that time I heard one whistle and laid the book down.

Q What whistle was that?

A This was the "Svea's" whistle.

Q What sort of a whistle did the "Svea" have?

A A loud, deep toned whistle.

Q A loud sounding whistle?

A Yes, sir, very loud.

Q Had you ever had any occasion to observe how far you could hear the "Svea's" whistle?

A No, sir, we never had no occasion to; it is a very loud sounding whistle.

Q After you heard the one blast on the "Svea's" whistle, what did you do?

A When I heard one blast of the "Svea's" whistle, I laid my book down. I thought it was peculiar and I

(Testimony of James Hayes.)

kind of listened again and I heard four. I heard one, then I heard one, two, three, four.

Q Four short blasts?

A Four short blasts, sir. Then I kind of took my time and got out of my bunk and by the time I got to the door, unhooked the door and the door swung back, I looked out and I found the "Newport" had struck her amidship. Then I just simply stood there. I put my overalls on and while I was putting my overalls on I was looking at the "Newport", and at the same time she drifted along aft towards the poop.

Q That is, towards the stern of your ship?

A Yes, sir.

Q Where was she with relation to where your room is located?

A Right in front of the room. My room is here, and she was drifting along here (indicating). I noticed an officer leaning over the rail and a colored fellow.

Q From where? What part of the "Newport"?

A Just below the bridge.

Q On the main deck?

A On the main deck.

Q On what is known as the hurricane deck?

A The hurricane deck, and I heard somebody sing out, "Stand by." By that time I never looked anywhere else; I just simply went down to my engine room and started up everything that was necessary to save the ship.

Q What did you start up?

A The pumps and siphons, and everything that is necessary to save the ship. The collision woke my

(Testimony of James Hayes.)

second engineer up and he came down below to the engine room.

Q Mr. Hayes, did you hear any other blasts of the "Svea's" whistle besides the signal blast and the four-blast signal that you have mentioned?

A No, sir, because when I went down below I was not thinking of that.

Q Did you hear anything before the four blasts?

A I was not taking no notice, but I heard that because it was so loud and the door was open. I didn't take no notice; I just went straight down below to start everything up that was necessary to keep the water out of the ship.

Q Did you hear any whistles from the "Newport"?

A No, sir.

Q None whatever?

A No, sir; never heard one at all.

Q When you got down to the engine room was the water coming in?

A Yes, sir; the water was over the low pressure carrying point.

Q Were you successful with your pumps in keeping the water down?

A No, sir; we could not hold it. It was raising until it put my high fires out. Then all I could do was to use my fire pump on top.

Q Were the engines finally stopped?

A The engines were finally stopped when she worked the steam off.

Q What happened when the engines stopped? Where was the ship at that time?

(Testimony of James Hayes.)

A Just a few miles off the beach.

Q Near Point Buchon?

A Near Point Buchon.

Q How long did you stay by the ship?

A I stayed by her until she almost turned over, until I got orders to leave her.

Q What time was that?

A Some time during the night. I would not exactly state the time, but later in the evening.

Q During the night did she completely turn over?

A She completely turned over, sir.

Q Mr. Hayes, I am handing you a photograph and ask you whether you recognize that as a photograph of the Steamship "Svea"?

A This is the "Svea", sir.

Q Is that the way she looked before the collision?

A Yes, sir.

Q Is that the way she was painted?

A Yes, sir.

Q Where was that picture taken?

A It has been taken in the dry dock, sir; I think it was taken at the Hanlon Yard, but I would not be sure of that. It is taken in a dry dock.

Q Does that photograph correctly show her condition before the collision?

A Yes, sir.

MR. DORR: I offer this photograph in evidence.

(Libelants' Exhibit No. 2.)

Q BY MR. DORR: Did you see the "Svea" when she was towed into San Francisco after the collision?

A Yes, sir.

(Testimony of James Hayes.)

Q Upside down?

Q Yes, sir.

Q I hand you a photograph and ask you if you recognize that as a photograph of the Steamship "Svea", showing the condition she was in when she was towed into San Francisco?

A Yes, sir; that is it.

Q Will you just point out on this photograph where the "Svea" is on the picture?

THE COURT: Have you seen those, gentlemen?

MR. MACKEY: Yes, sir, I have seen them.

A It is her upside down in the middle.

MR. DORR: I wish to offer this photograph in evidence.

(Libelants' Exhibit No. 3.)

MR. MACKEY: If you desire to offer those other photographs, I will admit that they are photographs of the "Svea" in the condition she was in in the dry dock.

Q BY MR. DORR: That shows the condition she was in after the collision?

A That shows the condition she was in after the collision after being towed into San Francisco.

MR. DORR: I now offer in evidence the photograph showing the cut in the port side of the "Svea".

(Libelants' Exhibit No. 4.)

MR. DORR: I now offer in evidence the photograph showing the view looking forward on the deck of the "Svea".

(Libelants'Exhibit No. 5.)

MR. DORR: Next the photograph looking after on the deck of the "Svea".

(Testimony of James Hayes.)

(Libelants' Exhibit No. 6.)

MR. DORR: All of which are admitted by counsel to be photographs showing the condition of the "Svea" after she was dry docked in San Francisco immediately following the collision. The libel which is filed on behalf of the owners of the "Svea" is also on behalf of the officers and crew of the "Svea", who lost their personal effects. Counsel for the Pacific Mail Steamship Company has stipulated that we do not need to prove the respective members of the crew at the present time. That may be a matter that may be included in the reference to the commissioner.

MR. MACKEY: I will, of course, Mr. Dorr, insist that those who appear before the commissioner, and who claim indemnity, will have to satisfy the court that they were members of the crew and that they lost their clothing, effects, and so forth.

MR. DORR: Perhaps I had better ask the chief engineer a few more questions:

Q Was Karl Rohberg captain of the "Svea"?

A Yes, sir.

Q Do you remember the name of the mate?

A Semsen.

Q Charles S. Semsen?

A Yes, sir.

Q Who was the second mate?

A Charles Anderson.

Q And you, James Hayes, was the chief engineer?

A Yes, sir.

Q Was Harry Walton on board?

A He was the cook, sir.

(Testimony of James Hayes.)

Q Was William R. Reilly on board?

A Yes, sir; he was assistant engineer, sir.

Q And Louis Norloff, I think you testified, was second assistant?

A Second assistant, sir.

Q Was Robert White on board at the time?

A Fireman, sir.

Q And John McDonald?

A Fireman, sir.

Q Was John Sett Strand on board, also, referred in the libel as Sett Strand?

A Yes, sir.

Q Do you remember a man by the name of George Dolan?

A I think I do. I think he was a winch driver. There is one or two that I can not remember.

Q You do not remember the names of the sailors, do you?

A No, sir.

Q All of those you have mentioned were on board at the time of the collision?

A Yes, sir.

MR. DORR: Cross examination.

CROSS EXAMINATION

BY MR. MACKEY:

Q How long had you been chief engineer of the "Svea"?

A At the time of the accident, sir?

Q Yes, at the time of the accident?

A 12 months.

Q 12 months?

(Testimony of James Hayes.)

A A little over 12 months.

Q The engines were in good condition, were they?

A Yes, sir; swell condition.

Q They could be reversed very rapidly?

A Yes, sir; you could reverse your level in about 2 seconds, and you could reverse your engines in around about 5 seconds.

Q It was an ordinary reciprocating engine, was it?

A Yes, sir; 750 horse power.

Q Of normal power for a schooner of that size?

A Yes, sir.

Q Had you ever had any occasion to notice how rapidly the ship would respond to the backing of the engines?

A She responds very quick below; she takes water very quick below; what she would do above, I had no reason to watch that at all.

Q Did you have a right turning screw?

A Yes, sir.

Q That would make the ship back to port when you reversed your engines?

A Yes.

Q That is, your stern would move to port if she backed?

A Yes, sir.

Q So far as you know, the "Svea" was the ordinary steam schooner, of the ordinary class and type, and maneuvered like the rest of them?

A Like the rest of them.

MR. MACKEY: That is all.

(Testimony of James Hayes.)

REDIRECT EXAMINATION

BY MR. DORR:

Q Mr. Hayes, a question or two that I overlooked. What become of your engine room log book after the collision?

A I had that in my bunk, sir, and I had some of my clothes there, and I was going to take them as soon as I got a chance, but the water was coming into the engine room from the port side and the way she was turning, the captain gave me orders to leave the ship, and the ship turned and I just managed to get into the boat.

Q In other words, the log book was lost?

A I lost everything; I could not get into my room. She just turned over that way (indicating).

Q. Did you have any record of the bells on the "Svea", the bells recorded on the "Svea", besides the log books?

A Yes, sir; I had a bell book.

Q I hand you a book with a black leather covering and ask you if you recognize that as your bell book?

A Yes, sir; that is my bell book.

Q Are there any entries made in that book of the bells at the time of the collision?

A Yes, sir. I told the first assistant to take the bells, and while he was taking the bells and handling the engine, my other assistant and my fireman came to give me a hand on the pumps.

Q Where is your first assistant now?

A He is back in Europe.

(Testimony of James Hayes.)

Q That is Mr. Reilly. He is in Europe at the present time?

A Yes, sir.

Q Did he record those bells in your presence in this bell book?

A He recorded those here (indicating). It is in his handwriting.

Q That was produced by Mr. Reilly and sworn to by him?

A Yes, sir.

Q The bottom of the page is your handwriting?

A Yes, sir; the bottom of the page down here is my handwriting.

Q Those entries in regard to the bells are made in the hieroglyphics in common use in the engine room, are they not?

A In the engine room.

Q Will you read the entries beginning at the top of the page, November 27th?

MR. MACKEY: I don't think that it is proper to read these unless they were made by this witness, or known to be absolutely correct.

MR. DORR: They were made in his presence, he testified.

THE WITNESS: They were made in my presence.

Q BY MR. MACKEY: Were you on watch?

A Yes, sir. I was down in the engine room at the time.

Q Were you on deck at the time of the collision?

A Yes, sir. Those were the bells afterwards.

Q You did not make those entries at all?

(Testimony of James Hayes.)

A No, sir; the first assistant makes those entries in the bell book. That is what they had down in the engine room. That is what the first assistant used.

Q BY MR. DORR: Do you know what time the collision occurred?

A I looked at my clock—I have a clock hanging right in front of my bunk, and it was 7 minutes to 10. I would not state that my clock was right to the minute.

THE COURT: That would be 9:53?

A 9:53.

MR. MACKEY: I have no objection, Mr. Dorr. The bell book may be admitted in evidence.

Q BY MR. DORR: Will you just read from the record, Mr. Hayes, the bells on this page which were recorded at the time of the collision?

A (Reading) 9:53 stop; 9:53 struck by "Newport"; 9:54 half ahead; 9:56 stop; 9:58 slow ahead; 10:01 slow astern ship making water. Put all pumps on bilges; 10:15, full speed astern; 10:20, plates. William Reilly, first assistant.

Q BY MR. DORR: Could you from your room on the port side of the ship hear any bells given the engine room from the bridge?

A Yes, I could hear them. If I had my door wide open, I could hear the bells, naturally.

Q Do you know if there was any bells given prior to the stop bell at the time of the collision?

A I don't think there was.

Q BY MR. MACKEY: That bell book is supposed to contain all of the bells, is it not, chief?

A The principal bells.

(Testimony of James Hayes.)

Q If there was a bell to stop, it would be there?

A If there was a bell to stop, it would be there.

Q BY THE COURT: What do these hieroglyphics mean?

A That means stop.

Q What are those four horizontal lines with one vertical line across?

A That is slow.

Q What is this one?

A That is slow ahead. This is stop. Ahead is that way. Slow ahead would be that way. Half ahead would be this way, and astern this way (indicating).

Q Are those standardized symbols that all ships use?

A Yes, sir; all ships.

MR. DORR: I think that is all.

MR. MACKEY: Chief, for the convenience of the court and as a matter of record, will you write on this sheet of paper the symbols for the various maneuvers of the engines, and immediately after, in the column adjacent, put what each signal means? I mean write the symbol for full ahead and then opposite that write in English "full ahead", so it will be explanatory on its face. Now, put half ahead by symbol, then write it out, slow ahead, and then stop. Write in the word "stop", if you please.

(Witness does so.)

Mr. Mackey: I offer this sheet of paper, upon which the symbols, and the English explanation adjacent, have been written by the chief.

MR. DORR: No objection.

(Respondents' Exhibit A.)

(Testimony of James Hayes.)

THE COURT: Q. Is there a reverse symbol also?

A Stand by, sir.

Q That is the same as stand by?

A That is stand by at the bottom.

Q Is the term "stand by" the same as "reverse"?

A No, sir; full astern, I think.

MR. DORR: Full astern and half astern.

Q BY THE COURT: You understand what I mean by reverse engines?

A Yes, sir.

Q Each of these terms indicate reverse engines?

A Full astern. If you are full ahead and you get a signal astern, you reverse your engines from full ahead to full astern.

Q BY MR. DORR: That is to say, in order to full astern on your engines you have to reverse your engines?

A I have to reverse my engines.

Q And the symbol used is full astern?

A Full astern.

Q BY THE COURT: Are these the symbols that are used in the service?

A Yes, sir.

MR. DORR: The libelants and cross respondents will rest at this time, if the court please.

MR. MACKEY: If your Honor please, the cross libel perhaps does not specifically refer to all of the rules by number that we have in mind. I mean the rules of the road. I think, however, the charges of fault against the "Svea" are sufficiently broad to include them, but if your Honor thinks not, I would like per-

(Testimony of James Hayes.)

mission to amend to refer specifically to the violations of articles 21 and 29. They are really within the same scope as article 27 referred to, but are further rules of precaution. Article 21 is the rule which says that the "Svea" should keep her course and speed and contains a note or provision for action in the event a collision is immediate and pending.

THE COURT: Any objection?

MR. DORR: The amendment, if the court please, is inconsistent with the admissions which the Pacific Mail Steamship Company has already made in their answer and in their cross libel, namely, that the "Newport" was bound to keep out of the way and failed to do so, and that she held her course and speed. Now, if the "Svea" was bound to do something else, then it would be inconsistent with the admissions which have already been made.

MR. MACKEY: No inconsistency at all, your Honor. We are invoking the same principle throughout, namely, that under the conditions prevailing at the time, the "Svea" should have taken some action to avert the collision, and so far as those rules apply to that situation, there is no inconsistency whatever.

MR. DORR: I believe it is admitted as alleged in paragraph 6 of our libel that the "Newport" failed to pass astern of the "Svea", that the "Newport" failed to slacken its speed, and failed to stop, and failed to reverse its engines. That could only be true on the theory that the "Svea" was bound to keep its course and speed.

MR. MACKEY: Not at all.

(Testimony of James Hayes.)

MR. DORR: Your contention is that the violation of the rules referred to could only be true on the ground that the "Svea" was not obliged to keep her course and speed, but was obliged to do something else.

MR. MACKEY: Not at all, Mr. Dorr. The theory upon which the pleadings are framed, and it is so alleged in the cross libel, that although the "Newport" was the burdened ship and was bound to keep out of the way and should have gone astern the "Svea", she didn't do so, and it was apparent to the "Svea" that she was not going to do so, that the "Svea" should have taken some action herself to avert the collision. Subdivision No. 3 of article 3 of the cross libel reads, referring to the "Svea": "That she failed to reverse her engines until the instant of the collision and too late to avoid the collision."

Sub-division 4: "That she failed to alter her course until the instant of the collision and too late to avoid the collision." 5: "That she violated article 28 of the International Rules for preventing collisions in that she did not blow the signals required by said article, and blew signals in violation of said article." 6: "That approaching the 'Newport', which had disregarded her signals and which gave no indication of heeding them, she failed to stop or slacken or take any precaution to avoid the impending collision." I have mentioned the particular articles that I have in mind so there may be no doubt.

Now, counsel has stated in a general way our position. We rest primarily upon the theory that the "Newport" being twice as long as the "Svea", and

(Testimony of James Hayes.)

four times her tonnage, would have taken much longer than the "Svea" to act; that the "Svea" having seen the "Newport" for 8 miles away when she was going 8 miles an hour, and having proceeded to a point where they were 2 miles apart, and observing throughout that time that the bearing of the "Newport" had not changed, and knowing that when the bearing did not change the vessels were bound to come together unless one of the two ships should change course or speed, that she at 2 miles away blew one blast and received no response; that subsequently the mate put his glasses on the bridge of the "Newport" and saw no one there; that when they were about a mile away the "Svea" blew four blasts, which was indicative that the "Svea" realized something was wrong; that the bearing was still the same, and that there was still no action on the part of the "Newport", and when they were between three-eighths and a half mile apart the "Svea" blew another danger signal and continued to keep her course and speed, notwithstanding the fact that the "Newport" was doing the same thing and notwithstanding the fact that those on the "Svea" could see no action at all upon the bridge of the "Newport" or any tendency to abide by the rules of the road, but notwithstanding continued right up to 100 feet of the collision before ever taking any action at all, and then when they did take action they threw their ship right across the bow of the "Newport". It is true we could not complain too severely of the last helm action because at that time there was no doubt great excitement on the part of somebody, but she should never have come to that point. The rule in the case of the "Delaware", which has been referred to—

(Testimony of James Hayes.)

MR. DORR: Do you maintain that there was no one on the bridge of the "Newport"?

MR. MACKEY: I don't know, Mr. Dorr, whether there was anyone there or not. I have never been able to get an explanation from the third officer as to what happened. My personal opinion is that he was not on the bridge of the "Newport". It was a most extraordinary thing. We have no question at all but what the "Newport" was at fault. That is admitted in the pleadings. There is no need of discussing or going into what she was doing at all. Our contention is that the "Newport" was coming, and that the "Svea" saw her coming, saw her from 8:50 in the morning to 9:53, and had blown three signals without response, and had proceeded, keeping her course and speed, which, under rule 31, she had a right to do, but, if your Honor please, not at all consequences or at all events. The rule in the case of the "Delaware" in which case the preferred vessel was exonerated, the court says: "The cases of 'The Britannia,' 153 U. S., 13, and 'The Northfield', 154 U. S., 629, must be regarded, however, as settling the law that the preferred steamer will not be held in fault for maintaining her course and speed, so long as it is possible for the other to avoid her by porting, at least in the absence of some distinct indication that she is about to fail in her duty", and we say she had indication that the "Newport" was about to fail in her duty. I doubt if any collision case will be cited, or can be found, in which the conditions are such as we have in this case in which the privileged vessel was exonerated.

(Testimony of James Hayes.)

MR. DORR: Yes, I have two others.

MR. MACKEY: Exactly the same?

MR. DORR: As nearly as I can possibly get them.

MR. MACKEY: The rule in the case of the "New York" is stated by the court as follows: "It is the duty of the steamer receiving signal whistles from an approaching steamer to answer them promptly, but it is also the duty of such approaching steamer, on failure of the other to answer, to stop until her silence is explained and her course ascertained with certainty." That case is cited in 175 U. S., page 187; 44 Law Ed., page 126.

I will cite other cases, your Honor, but I would like to read one more here. This case is the case of the "Admiral Watson", 266 Fed., 122, where the court reviews the law to a certain extent. In that case the "Adimral Watson" was the privileged vessel, but both were held at fault. The court said: "The fact that a vessel is privileged, and entitled to hold her course, does not excuse her from adopting such precautions as may be required by statute, and necessary to prevent a collision", citing "The New York", where it quotes: But the fact that a steamer is entitled to hold her course does not excuse her from inattendance to signals, from answering where an answer is required, or from adopting such precautions as may be necessary to prevent a collision, in case there be a distinct indication that the obligated steamer is about to fail in her duty, as was said in the case of "The Sunnyside", 91 U. S., 208: "Cases arising in navigation, where stubborn adherence to a general rule is a culpable fault, for the reason that

(Testimony of James Hayes.)

either navigator ought to know that the rules of navigation are ordained, not to permit collisions, but to save life and property by preventing such disasters.

Then referring to the particular fact, the court says: "The master of the 'Helgeland' must have known if he continued in his course a collision was inevitable. He did not give a danger signal or stop his engines or reverse." Then it quotes again from the "New York": "The lesson that some vessels must stop their engines in the presence of danger, or even of anticipated danger, is a hard one to learn; but the failure to do so has been the cause of the condemnation of so many vessels that it would seem that these repeated admonitions must ultimately have some effect." Then referring to the particular case: "From what has been said it is apparent that the 'Watson' was grossly at fault. She failed to answer the signal. She did not maintain a proper lookout. But her unlawful and negligent conduct did not justify the 'Helgeland' to continue in a course the inevitable result of which was a collision in violation of her statutory duty, when the course of the approaching vessel was uncertain or in doubt and her first signal unanswered."

MR. DORR: What court was that decided in?

MR. MACKEY: Judge Neterer in the Western District of Washington. Now, I call the court's attention to the answer of the owners of the "Svea" to the cross libel of the Pacific Mail Steamship Company on page 4, which reads in part, on line 9, beginning on line 9: "Deny that Steamer 'Newport' gave no indication of heeding the Steamer 'Svea', but admit that the acts

(Testimony of George McKinnon.)

of the 'Newport' were such as to raise a doubt as to whether she intended to obey the rules of the road."

Call Captain McKinnon.

GEORGE McKINNON,

called as a witness on behalf of respondents, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MACKEY:

Q Where do you live, Captain?

A 1208 Wall Street, San Francisco.

Q How old are you?

A 75.

Q How long have you been going to sea?

A 60 years.

Q What papers do you hold?

A Master's.

Q Are you still the master of the "Newport"?

A Yes, sir.

Q You came up from the Panama Canal, did you, for this trial?

A I came up from Central America.

Q How long have you held your master's papers?

A 32 years.

Q You are commodore of the Pacific Mail fleet?

A Yes, sir; I am the oldest man in their service.

Q Have you ever been in collision with one of your ships before?

A No.

Q How long have you been with the Pacific Mail people?

(Testimony of George McKinnon.)

A 46 years.

Q This collision was on November 29th, 1922, the one with the "Svea"?

A Yes.

Q Were you on the bridge at the time of the collision?

A Yes.

Q How long had you been there?

A About 10 seconds.

Q Who was the navigating officer of the "Newport"?

A The third officer.

Q What course was the "Newport" on?

A Magnetic course, east by south.

Q Where did the collision occur?

A Off San Luis Obispo.

Q Your time recorded the collision also as 9.53, didn't it?

A Yes, 9:53.

Q. Did you see the "Svea" before the collision?

A Yes, I did see her.

Q Where were you at the time?

A I was down below in the toilet.

Q How long had you been off the bridge?

A Oh, about 20 minutes.

Q What was the direction of the "Svea" from the "Newport" when you saw her?

A Three points on the starboard, 600 feet off.

MR. MACKEY: Referring to this diagram, I might say, Mr. Dorr, I would like to introduce this diagram in evidence.

(Testimony of George McKinnon.)

MR. DORR: It is not intended to be accurate. It was merely to illustrate my opening statement. I don't intend to be bound by any of those measurements.

MR. MACKEY: Neither do I.

THE COURT: Is it drawn to scale?

MR. DORR: I drew the angles and the scale is 6 inches to the mile. It was drawn to scale as closely as can be given and the position of the "Newport" was taken by drawing parallel lines all the way down. It is not accurate at all.

THE COURT: It is merely for the purpose of illustration?

MR. DORR: Yes, sir.

MR. MACKEY: That is the purpose of the offer, your Honor.

THE COURT: It may be received.

Q BY MR. MACKEY: Referring to this diagram, Respondents' Exhibit B, when you saw the "Svea", was she coming in the general direction indicated by this line marked here, northwest by north, one-half north?

A That looks more like a right angle.

Q Have you reference to this course here, south 79 degrees east?

A Yes.

Q Is that about the way she was coming?

A That is practically correct, as near as you can get it.

Q What was the visibility on the morning of this accident?

A Fine, clear morning. You could see all around the horizon, 10 or 12 miles.

(Testimony of George McKinnon.)

Q How long is the "Newport"?

A 337 feet long.

Q What is her gross tonnage?

A 2600 and some odd, I forget now.

Q She is 2643 tons?

A Yes, 2643, I think, to be correct.

Q What was the speed of the "Newport" on the morning of the collision?

A Doing about 9 miles an hour.

Q You were fully loaded, were you?

A Yes, sir.

Q Do you know what your draft was?

A 19-6.

Q Was that on even keel?

A About even keel, 19-6 forward.

Q BY THE COURT: What is the meaning of that term, on an even keel?

A Just drawing as much water forward as aft.

Q BY MR. MACKEY: Do you know what I mean when I speak of the turning radius of a ship?

A Yes.

Q What does that mean?

A The circle that I make going around?

Q Yes.

A It will take me a mile and three-quarters to two miles to go round.

Q That is the circumference?

A Yes, the circumference.

Q That is, if you put your helm hard to port?

A You will subscribe a circle three miles, putting her hard aport or starboard.

(Testimony of George McKinnon.)

Q Is that loaded or light?

A Loaded.

Q Loaded as you were on the morning of this collision?

A Yes.

Q From your experience in handling ships, would you be able to tell me whether the "Svea" would require as much space, or more space, than the "Newport" to turn in? That would be answered yes or no.

MR. DORR: I would like to inquire as to what his experience is with respect to the type of vessel of the "Svea".

A I know, anyhow, a man don't need to know any ship to know what to do. The little "Svea", you could turn around in twice her length, anyhow.

Q BY THE COURT: Loaded, Captain?

A Loaded, yes.

Q BY MR. DORR: Have you ever had any experience with vessels the type of the "Svea"?

A No.

Q BY MR. MACKEY: Have you seen them turn around?

A Yes, I have seen them turn around. Some of them will turn around right on their heel.

Q Captain, I wish to put to you the following question: Assuming such a vessel as the "Svea" approaching a vessel the type of the "Newport", and the Svea" sighting the "Newport" 8 miles away and on a course crossing her own and bearing about 3 points on the port bow, and assuming that the "Svea"-type of vessel proceeds until the vessels are within two miles of each

(Testimony of George McKinnon.)

other, whereupon the "Svea" type gives one blast on her whistle and she keeps her course and speed throughout, and when the vessels are about one mile apart, the "Svea"-type of vessel gives four blasts on her whistle, and when the vessels are between three-eighths to half a mile apart the "Svea"-type vessel gives another signal of four blasts, and that she gets no response from any of those signals; that she sees no one on the bridge of the approaching ship, and she sees no tendency on the part of the approaching ship to keep out of her way as she is obliged to keep out, state whether or not from your experience as a master mariner whether an ordinarily prudent master would deem that sufficient notice that the approaching vessel was about to fail in her duty of keeping out of the way and warrant the privileged vessel in changing her course or speed?

MR. DORR: I wish to interpose an objection to the question because the duties referred to by counsel are fixed by law and are not a matter of opinion; furthermore that the facts assumed as the basis for the hypothetical question are too indefinite as to the point at which the "Svea", the privileged vessel, is obliged to make up its mind.

THE COURT: It seems to me that that is not the proper subject matter of a hypothetical question, Mr. Mackey. I think that is the ultimate fact which is to be answered by the court from the narrative of the facts.

MR. MACKEY: The purpose of the question, your Honor, or the question is designed to develop what a man of seafaring experience would do under the cir-

(Testimony of George McKinnon.)

cumstances, as, I take it, the rule applicable in a state of this kind is what would an ordinarily prudent navigator do under those circumstances. It is not, as counsel would insist, a rule which is inflexible and which does not take into consideration what good seamanship is. I might say that article 29 reads: "Nothing in these rules shall exonerate any vessel or the owner or master or crew thereof from the consequences of any neglect," then reciting several things there, "or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case." Now, I call the court's attention to the case reported in the 113th Fed., 541, where the court says: "The question here is whether, at the time the 'Reliance' changed her course, the officer in command was justified in believing that the 'Zampa' was about to fail in her duty to keep off." This is a case where the privileged vessel was exonerated from changing its course. "And that there was immediate danger of collision, unless her course was changed. She had a right to depart from her course if necessary in order to avoid immediate danger and having this right, it must follow that, if the officer in command exercised a reasonable judgment in view of all of the conditions then present, the action taken by him in changing the course of the 'Reliance' can not be attributed to her as a fault. This general principle stated in different language has often been announced. Thus: That when the vessel that has the burden of avoiding the danger has come so near that, to a reasonable, firm and skillful navi-

(Testimony of George McKinnon.)

gator it appears that the collision is unavoidable, it shall be taken to have been so."

Now, I think what ordinary, prudent and skillful navigators would do under the circumstances and what they would judge from the conditions, in the absence of warnings and in the absence of seeing anything on the "Newport", is material. I think it is the ultimate fact to be decided by the court, true, but I think the court should have the aid of persons who have this experience.

THE COURT: Well, could it be determined by a hypothetical basis? Isn't it necessarily determined by the actualities rather than by the specifications? In other words, is the converse of the rule announced in that "Zampa" case? The rule of the decisions, and as I understand that case, provide that a vessel, notwithstanding the rule that it must maintain its course and speed, that there may be a time of an expected collision where a deviation from that rule would be reasonable care. Now, has there been any case that has announced the converse, that the vessel should deviate from the requirement of the statute, or if there has not been, shouldn't it be determined by a narrative of the facts as to whether the master of the burdened ship did all that the law required rather than a statement by an expert that in his opinion it would be reasonable care, because that is the ultimate fact, as I view it, for the court to decide, whether or not there was any negligence on the part of the privileged ship. I think the case should be confined to a narrative of what occurred. It seems to me that the same rule would

(Testimony of George McKinnon.)

be applicable as would be applicable in an ordinary collision case on a steam railroad, for instance, the application of the last clear chance doctrine, which I mentioned at the beginning. I am sure it would not be competent for an engineer to testify that it would be reasonable care and prudence on the part of the engineer to do thus and so; he would be called upon to say what he did and tell the circumstances of the collision itself, and that would be before the court, and from his testimony, along with the other facts and circumstances, the court must answer the question whether he did what a reasonably prudent man would do under the circumstances.

MR. MACKEY: But at sea on a vessel where masters are accustomed to hearing signals and observing movements of another ship and determining from what they see and hear whether or not to slow down or what course to pursue, it seems to me that they are in an excellent situation for advising the court as to what an ordinarily prudent master would resolve out of the facts as presented here.

THE COURT: That may be. On account of the language of this section I didn't have in mind the converse.

MR. MACKEY: It is certainly a rule of good seamanship, which is applicable in this case, whether or not to proceed in a course throughout under these circumstances.

THE COURT: I hadn't in mind the converse of this article 29 which reads as follows: "Or of the neglect of any precaution which may be required by the or-

(Testimony of George McKinnon.)

dinary practice of seamen." It might be relevant to show the practice of seamen. It seems to me that the evidence would have a rather meager weight where there is, I think, a better and more secure type of evidence that could be elicited than the hypothetical question. It is simply a question of the weight or value of the evidence. I don't attach much value to it, however.

MR. MACKEY: Then, your Honor, I will reframe the question to recite the facts and ask the Captain what he would do.

MR. DORR: I just want to add an observation to that rule that has been stated by counsel. It will be noticed that rule 29 says "Nothing in these rules shall exonerate any vessel or owner or master or crew thereof from the negligence of any neglect to carry any lights or signals or any neglect to keep a proper lookout or of the neglect of any precaution which may be required by ordinary practice of seamanship, or by the special circumstances of the case." Now, the Supreme Court has held definitely on that section that there is nothing in these rules that require these things to be done. It says these rules shall not change anything that has heretofore existed in maritime law. The "Bluejacket" is authority on that question of lookout, the Tacoma Mill Co. vs. The "Bluejacket". It calls attention to the wording of that section; it says that the rules do not require a lookout to be kept and do not require the things to be done that are mentioned in this section, but these rules shall not exonerate a person from doing those things which are otherwise required by maritime law. Now, the position of the Pacific Mail Steamship

(Testimony of George McKinnon.)

Company is this: That the Steamship "Svea" did not navigate properly immediately and prior to the collision. The testimony upon which they must base their claim necessarily is the testimony of the officers on the "Svea" as to what was done and what could have been done and what they did do, and if there is anything that they failed in doing they must depend on the officers of the "Svea". That has already been introduced in evidence, the story of the captain and the mate. The depositions are already in.

THE COURT: I think, perhaps, that is not true just as you have expressed it, otherwise it would foreclose the real inquiry into the questions of fact as relative to the activities of the two vessels. Supposing, for instance, the officers of the "Svea" clearly testify that there was no one on the bridge of the "Newport", and supposing the officers of the "Newport" would testify that there was no one on that bridge at a certain time?

MR. DORR: Any questions of that kind, I quite agree, should be taken into consideration, but so far as any opinion as to what would or could have been done—

THE COURT: I have already discussed that.

MR. MACKEY: I don't think for a minute that I am bound by the opinion of your master and mate as to what should have been done. I agree I have to look out of the record to find out what was done.

MR. DORR: That is true. The law fixes what has to be done.

THE COURT: Let us get along, gentlemen; I think we are discussing academic questions. The objection to the hypothetical question will be sustained.

(Testimony of George McKinnon.)

THE WITNESS: If you will allow me to say something.

THE COURT: I don't know as you can help us any, Captain. This is more of a legal question.

MR. MACKEY: I don't know as I understand your Honor, but I will ask this question with a view of finding out what has been said, and if I am in error I expect it will be objected to on the same ground. It will be hypothetical to the extent that I state the facts to the Captain and ask him what he would do as a master mariner.

MR. DORR: I will make the same objection.

THE COURT: I am not saying but what expert testimony as to what the officer of the "Svea" did is not competent and relevant. In other words, you may show what they did, assuming that you will concede that what they did is clearly shown by the testimony. I think you have a right to offer expert testimony to show what they did was not good seamanship.

MR. MACKEY: That is it, your Honor.

THE COURT: That was not the purport of the other question. The purport of the other question was to show that what the officers of the "Newport" did was ordinary care in so far as good seamanship was concerned.

MR. MACKEY: I think you misunderstood the question, your Honor, unless I misnamed the vessels.

THE COURT: You had better reframe your question.

Q BY MR. MACKEY: Captain, the evidence shows that the master of the "Svea" sighted the "Newport"

(Testimony of George McKinnon.)

three points on its port bow at about 9:20 a. m. on a course crossing his course, as much as east by south 800 feet northwest by north one-half north; it was a clear ,fine morning; the "Newport" remained in sight from then on until the time of the collision; her bearing did not change at any time; when the vessels were two miles apart, approximately, he blew one blast on his whistle and got no response from the "Newport"; when the vessels were about a mile apart he blew four blasts on his whistle and received no response from the "Newport"; when the vessels were between three-eighths of a mile and half a mile, or at least a little more than three-eighths of a mile apart, he blew another danger signal of four blasts and received no response from the "Newport"; prior to this time on various occasions from the time the vessels were 6 miles apart until they were 1 mile apart the mate of the "Svea" had been on the bridge and looked at the bridge of the "Newport" through the glasses and saw no one present thereon and at no time was there any indication or showing on the part of the "Newport" that she was going to keep out of the way, and, as stated, the bearing of the "Newport" on the "Svea's" bow remained the same throughout. Under those circumstances, from your experience as a master mariner, what would you say the rule of good seamanship would dictate?

MR. DORR: I wish to object to that question on the ground it is not based upon all of the testimony; the facts show that while there was no indication that the "Newport" would keep out of the way, there was also no indication that she would not keep out of the way.

(Testimony of George McKinnon.)

That is the full testimony of the officers of the "Svea", and the hypothetical question is not based upon the testimony. Furthermore that the movements of the "Svea" under those conditions are a matter of law and the law has been fully decided by the Supreme Court under the very same conditions.

THE COURT: Objection overruled.

MR. MACKEY: Answer the question, Captain. Did you understand the question?

A Yes, I understand your question.

Q What would the rule of good seamanship dictate under those circumstances?

A If I thought I could clear them by going with my helm hard to starboard, I would do so; if I could not, I would use my own judgment, I would stop or back; I would keep away from the ship, I would not run onto her.

Q Under those circumstances that I have stated to you would you consider the situation such as would justify a change of course and speed on the part of the "Svea"?

A Yes, certainly. When ships get within a half mile of one another it is time to do something, no matter what the kind or type of the ship. When they get within a half a mile they ought to do something, notwithstanding any rules or regulations of what a man has to do.

MR. MACKEY: Take the witness.

CROSS EXAMINATION

BY MR. DORR:

Q You said you left the bridge about 20 minutes before the collision?

(Testimony of George McKinnon.)

A Yes, sir: 20 minutes.

Q That was possibly around 9:35?

A 9:30, I think. We have it in the log book.

Q That was the time you changed your course?

A That was the time we changed.

Q Who was on watch at that time?

A The third officer.

Q Mr. McKeown?

A Yes, sir.

Q Where was he standing on his watch, on the bridge?

A He said he was on the bridge. I think he was in the chart house.

Q That is a new idea with you, is it not?

A No, I don't think it is. I think that is what I said on the first examination before the United States Inspector.

Q Did you ever make such a statement as that before?

A Yes, sir; before the United States Inspectors.

Q When you came back up on the bridge he was on the bridge, was he not?

A He was on the bridge when I come up there.

Q What excuse did he give for not avoiding the "Svea"?

A He said he didn't see her.

Q You gave some instructions to your officers about standing watch on the bridge, did you not?

A This young man was just keeping his first watch on ship; he just shipped the day before, and was making his first voyage.

(Testimony of George McKinnon.)

Q You never made any such a statement before the United States Inspectors that this man was off the bridge at any time?

MR. MACKEY: I object to you suggesting that the Captain said that the man was off the bridge.

MR. DORR: He made the statement.

MR. MACKEY: The Captain said he thinks that he was off the bridge.

Q BY MR. DORR: Didn't you state that you made the same statement before the inspectors?

A That is what I said. I said he was on the bridge, but I told the inspectors that I think he must have been in the chart house.

Q He said he was on the bridge?

A That he said that he was on the bridge.

Q The only thing upon which you base your statement now that he was not off the bridge is your opinion?

A He was there when I come up on the bridge.

Q He was there when you left?

A He was there when I left; yes, sir.

Q And the bridge of the vessel runs from one side of the vessel to the other?

A Right across.

Q In the clear?

A In the clear.

Q And immediately below the bridge is the wheel house?

A Yes, sir.

Q Where the man at the wheel steers the ship?

A Yes, you speak to the man at the wheel from the bridge.

(Testimony of George McKinnon.)

Q And from that wheel house he looks out ahead?

A Looks out ahead.

Q It is one of the sailors on the ship that steers the ship?

A The quartermaster.

Q And the officer on watch walks back and forth?

A He looks out for the ship; he keeps watch and the quartermaster steers the ship.

Q BY THE COURT: Is the quartermaster supposed to keep a lookout at all?

A Yes sir.

Q He is supposed to look out as well as to hear orders from the officer above?

A Yes, sir.

Q BY MR. DOOR: Who was on the bridge with the second mate or the third mate?

A Nobody was on the bridge.

Q Isn't there another quartermaster who is not steering?

A There is only one quartermaster that steers.

Q Another one that sounds the bilges?

A He sounds the bilges every hour and works around the deck.

Q He does that when he is not steering?

A Yes.

Q Have you produced your third mate in court here?

A No, he is not here.

Q Is your quartermaster here, either of them?

A No, this is 18 months ago since that happened. The Lord knows where they are now.

Q Neither of the quartermasters nor the third mate are here?

(Testimony of George McKinnon.)

A No.

Q Nor have you taken their testimony?

A They got their testimony all down somewhere.

THE COURT: There was a term used here that I don't understand. You said the quartermaster would sound the bilges.

A He sounds the bilges every hour.

Q What is sounding the bilges?

A That is to find out the depth of the water in your hold. We have three holds on the "Newport", a forward hold, amidship and aft, and there is a pipe that goes from the main deck down to the bottom of the ship in which he sounds to find out how much water there is in the ship.

Q BY MR. DORR: When you first went down below you went to your cabin?

A Yes, sir.

Q Then you went to the lavatory?

A Yes sir.

Q That is on the port side?

A No, on the starboard side.

Q On the main deck?

A On the main deck.

Q You were in the lavatory there?

A Yes.

Q When you heard the "Svea" whistle?

A I heard the two whistles and I got up and looked out the port and saw this ship coming right for me.

Q What whistle did you hear?

A I think it was two I heard.

Q A shrill tone like a schooner or gasoline launch?

A Not like a schooner, like a gasoline launch.

(Testimony of George McKinnon.)

Q A shrill whistle?

A It was not toot-toot; it was too-oo-oo.

Q The tone of the whistle was shrill like a gasoline launch?

A Yes.

Q That two-blast signal was the only thing you heard?

A Yes, sir.

Q Was the window of the lavatory open?

A Yes.

Q The port hole was open?

A Yes.

Q You heard this shrill whistle?

A Yes.

Q That is all you heard?

A That is all I heard.

Q And you looked and saw the "Svea" about 600 feet away?

A Yes, sir.

Q Then what did you do?

A I got up on the bridge right away.

Q Were the engines stopped then?

A The engines were going full speed astern.

Q Did your man on the bridge say he didn't hear the "Svea"?

A He said he didn't see them or hear them signal. There was a lot of passengers on the ship and nobody heard the whistle.

Q The "Newport" did not blow any whistles at all?

A No, we did not. I was the only one that heard those whistles.

(Testimony of George McKinnon.)

Q Nobody else heard them?

A No.

Q None of the passengers?

A No.

Q Never heard the "Svea" at all?

A No.

Q Now, you have referred to turning your ship in a circumference of only three-quarters to two miles.

A Oh, yes.

Q Did you have a hand or steam steering gear on the "Newport"?

A Steam steering gear.

Q You can put that over very rapidly, can you not?

A Very quickly.

Q Captain, from the time that you start to put your wheel over, how long does it take the ship to begin to change her course?

A 5 or 10 seconds.

Q For instance, Captain, if you had a buoy, or some object ahead of you, in front of you, and you wanted to swing, going at 9 knots, to clear that, you could swing the vessel very quickly?

A Very quickly.

Q You say it would only take 5 or 10 seconds?

A It would take about 18 seconds to go from one point to the other. In 2 minutes she will make about 4 points.

Q Now, at the rate of 9 knots an hour your vessel would travel about 900 feet a minute, would she not?

A About that.

Q She would go a mile in six and two-thirds minutes?

A Yes, she would go about that.

(Testimony of George McKinnon.)

Q She would go about 900 feet a minute, so that by the time that you had gone a ship length, from the time you put your wheel over your vessel would start to swing?

A Yes. We didn't put any wheel over. There was no wheel to put over.

Q I am saying at the time of the collision when you were going 9 knots, and you put your wheel over, before the vessel had gone a ship's length she would start to swing over?

A Yes.

Q She is a very handy ship?

A Yes.

Q Steers easily?

A Yes.

Q Turns easily?

A Yes, sir.

Q Wasn't she what was known as a good handling ship?

A Yes, sir; we call her an easily handling ship, a handy ship to handle.

Q Before you had gone a ship length she would start to turn?

A Yes.

MR. DORR: I think that is all.

REDIRECT EXAMINATION

BY MR. MACKEY:

Q When the third mate stands his watch, if he is standing properly as he should upon the bridge or close to the bridge—

A Upon the bridge.

(Testimony of George McKinnon.)

Q Can he be seen from other ships if he is on watch at the proper place?

A Oh, yes, you can see all around everywhere.

Q If the third officer had been on the bridge would it have been at a place where those on the "Svea" could have seen him if they had put up their glasses on him?

A Yes, it could be done with the naked eye.

Q You had a chart house in the immediate neighborhood?

A Right on the bridge.

Q You keep a chart on the table there?

A Yes.

Q That was your navigating chart?

A Yes, sir.

Q At the time you changed your course just before the collision, were you heading true?

A I was keeping her in a little so I would get a good departure from Lion Rock.

Q In case the officer on watch wanted to consult the chart for a moment while he was navigating the ship, could he step in the start house and then back on the bridge?

A Oh, yes.

Q There is no reason why he could not do that?

A No.

Q It would not require more than half a minute?

A He steps right off the bridge into the chart house.

Q He could still do that and be on duty there?

A Yes.

Q While he was doing that the man below would still continue the ship on its course?

(Testimony of George McKinnon.)

A We do that all the time. There is windows in the forward part of the chart house and he could see out.

Q He could keep a lookout from the chart house?

A There is a window on this side and a window on that side and there is two lights in the forward end, and you could see all around.

Q So that a man walking up and down on watch could still go in the chart house and could still be navigating the ship?

A Yes.

Q The "Newport" is a normal handling ship?

A Yes.

Q Does she turn more rapidly than an ordinary ship?

A No, she turns very handy. We call her an easy handling ship.

Q More rapidly than an ordinary ship of her size, or not?

A She would turn as an ordinary ship of her size.

MR. MACKEY: That is all.

Q BY THE COURT: Captain, what is the condition of the passage from a point up at the left hand side of the map there, the first point where the "Svea" was up to the point of the collision? Is it safe passage in towards the shore?

A I don't understand what you mean.

MR. MACKEY: I think I might clear that up, your Honor.

Q BY MR. MACKEY: How far off shore were you, Captain?

A 12 miles off shore.

Q Any rocks or shoals around there?

(Testimony of C. A. Heygendorff.)

A Nothing around there.

Q Any ships there?

A No ship in sight at all.

Q Just the "Newport" and the "Svea"?

A That's all, just the "Newport" and the "Svea".

MR. MACKEY: That is all.

MR. DORR: That is all.

C. A. HEYGENDORFF,

called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MACKEY:

Q What is your occupation?

A Pilot, employed by the Harbor Department, City of Los Angeles.

Q How long have you been going to sea?

A 25 years.

Q What papers do you hold?

A Unlimited master's papers, and pilot papers for San Diego, San Pedro, San Francisco, Columbia River, Astoria, and all of the Puget Sound, Tacoma and Seattle.

MR. MACKEY: Any question as to his qualifications as a master mariner?

MR. DORR: No, there is not.

Q BY MR. MACKEY: Do you know the Steamer "Svea"?

A Yes, sir; I have seen her.

Q Do you know the Steamer "Newport"?

A Yes, sir.

Q The evidence in this case shows that the Steamer "Svea" was proceeding on a course northwest by north

(Testimony of C. A. Heygendorff.)

one-half north, and the Steamer "Newport" was proceeding on a course east by south, and while so proceeding the Steamer "Svea" saw the Steamer "Newport 8 miles distant, bearing about 3 points on her port bow, and when the vessels were about 2 miles apart the Steamer "Svea" blew one blast on her whistle and received no response from the "Newport"; when they were about 1 mile apart she blew four blasts on her whistle and received no response from the "Newport", and when they were a little more then three-eighths of a mile apart she gave four blasts on her whistle and received no response, during all of this time the bearing of the "Newport" remained practically the same; there were no other ships in the Pacific, and the vessels were 15 miles off shore, the weather was clear, wind was light, just a slight northwesterly swell; when the vessels were a mile to 2 miles apart the mate of the "Svea" looked on the bridge of the "Newport" with his glasses, and from time to time looked at the "Newport" with glasses and saw no sign of anyone on the bridge, neither the master nor the mate had seen anyone on the bridge of the "Newport" at any time; that the course and speed of the "Svea" was maintained throughout and apparently the course and speed of the "Newport"—apparently to those on the "Svea" the course and speed of the "Newport" was being maintained. Under those circumstances what would be your judgment as the proper course under the rules of good seamanship for the "Svea" to take?

MR. DORR: I object to that, as a matter of law, not a question of opinion of a witness.

(Testimony of C. A. Heygendorff.)

THE COURT: Objection overruled

A Shall I answer the question?

MR. MACKEY: Yes.

A In my opinion there was danger of a collision between the two vessels and I would followed either one of three courses; I would have put my helm hard aport or hard astarboard, or stopped my engine, or reversed the engine when I became suspicious that there was something wrong with the approaching vessel.

Q Under the circumstances as I gave them to you, was there anything in the situation which would have made an ordinarily prudent master suspicious?

A Yes, I think there was.

Q When would you have taken any action if you had been handling the "Svea"?

A Immediately after receiving no response to my second danger signal.

Mr. MACKEY: That is all.

CROSS EXAMINATION

BY MR. DORR:

Q You would take that action, Captain, when you became doubtful as to what the other vessel was going to do?

A If I thought there was risk of collision, yes.

Q Now, Captain, assuming that the "Newport" was coming down on this course and the "Svea" coming on this course (indicating).

MR. MACKEY: You are referring now to this chart respondents' Exhibit No. 2.

Q BY MR. DORR: Referring to the courses shown on respondents' Exhibit B, and supposing that the "Svea" was along in here, you would have taken some action?

(Testimony of C. A. Heygendorff.)

MR. MACKEY: "Along in here" does not mean anything. Where are you pointing?

MR. DORR: What was the distance you gave? I can not point out the exact distance on this chart. What was the distance you gave?

MR. MACKEY: When?

MR. DORR: The distance of the second danger whistle.

MR. MACKEY: The distance at the second danger whistle was when they were half a mile apart. Three-eights of a mile apart, I believe, according to the testimony, Mr. Dorr.

Q BY MR. DORR: Assuming at that time you became doubtful and thought that there was risk of a collision occurring, and at that time you started to port your helm, which would turn your ship's head to the left, to the port, would it not?

A Yes.

Q At the same time the "Newport" had starboarded her helm, as she was required to do under the law, both vessels would have turned out in that direction, what would have happened?

A That is very hard to tell from a diagram like that. I think the speed of the "Newport" being 9 knots and the speed of the "Svea" being 8 knots and the vessels being half a mile apart, that in all probabilities with the vessel of the type of the "Svea", and light, that they would have cleared. It is hard to say whether they would have hit. I believe, being a half a mile apart, they would have cleared.

(Testimony of C. A. Heygendorff.)

Q That would have been danger of a collision if they had both turned together?

A There would have been, yes.

Q In your answer in which you said you would have manuevered by putting your helm hard to port or hard to starboard or stopped and reversed your engines was based on the assumption that the "Newport" was going to hold her course?

A It looked like it up to that time.

Q You base your answer on what it looked like at that time, still if she changed her course and the "Newport" changed her course, there would have been a collision?

A With the vessels still half a mile apart other action could have been taken if there was any indication of the "Newport" making a change.

Q The "Newport" had a chance to starboard her helm and clear at that point?

A Yes, sir.

Q And easily have gone astern the "Svea" at a distance of half a mile?

A Yes, sir.

MR. DORR: That is all.

MR. MACKEY: Would there be more or less danger in changing your helm under those conditions after the second danger signal, or would you have proceeded on your course?

A I would have changed her course unless I thought there was the least danger in doing so.

Q Could you have stopped your engines without any danger to yourself, too?

(Testimony of C. A. Heygendorff.)

A Yes, sir.

Mr. MACKEY: That is all.

Q BY MR. DORR: If you had stopped your engines and the "Newport" at the same time had come to the left she would come right down to where the "Svea" was, wouldn't she?

A She might have come pretty close.

Q In other words, you would figure on stopping your engines because you thought the "Newport" would hold her course?

A Of course, I have no means of knowing within a few feet of where those vessels would have been. I am not in a position to say and I don't believe anybody is. However, if the vessels did collide, and the "Newport" came within, we will say, 100 feet of clearing the "Svea", had the "Svea" taken some action and swung in the other direction, or stopped her engines, in my opinion she would not have been in the position to be struck the moment she was struck.

Q That is based on the "Newport" holding her course?

A Yes.

Q Now, Captain, you are familiar with the rules that requires the privileged vessel to hold her course and speed?

A I am.

Q Do you think that when you saw a vessel on your port bow coming down and there is some doubt as to whether she is going to act or not, that you can speculate as to whether she is going to act and maneuver your vessel accordingly?

(Testimony of Fred Warner.)

A When I went to sea I always got away from that condition; I was nowhere near to it.

Q You always held your course and speed?

A Not always.

Q Did you speculate when you did not know what the other vessel was going to do and take some maneuver?

A I think I would have followed the unwritten law on this coast, which is very often done, and that is, go ahead, mule, and go astern of the steam schooner. That I think is controlling on this coast. To keep clear.

Q If the "Newport" had gone astern of the "Svea" you think it would have shown better judgment?

A Yes, it undoubtedly would have shown better judgment.

THE COURT Take a recess until 2:00 o'clock.

(A recess was here taken until 2:00 o'clock p. m.)

AFTERNOON SESSION.

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2 o'clock.

THE COURT: Proceed, gentlemen.

FRED WARNER,

called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MACKEY:

Q What is your occupation?

A Master mariner.

Q How long have you been a master mariner?

(Testimony of Fred Warner.)

A 27 years.

Q How long have you been going to sea?

A 42 years.

Q In what capacity are you engaged at present?

A Municipal pilot.

Q In the course of your experience have you had occasion to handle steam schooners?

A Yes.

Q Has that experience been limited or unlimited? How much have you done with steam schooners?

A Steam schooners, let's see, 7 or 8 years, I guess.

Q Captain, the evidence in this case shows the following situation: The Steamer "Svea"—do you know the Steamer "Svea"?

A Yes.

Q And the "Newport"?

A Yes, I know the "Newport".

Q The evidence shows that the Steamer "Svea" was proceeding on a course northwest by north one-half north, magnetic, and the Steamer "Newport" was proceeding on a course east by south, magnetic; it was a bright, clear day, visibility 12 to 15 miles, perhaps more, a light wind, light northwesterly wind, moderate swell, northwesterly swell; that the Steamer "Svea" had a speed of 7½ or 8 miles an hour, and the Steamer "Newport" had a speed of something between 9 and 10, 9 or 10; that the Steamer "Svea' 'sighted the Steamer "Newport" 8 miles distant, 3 points on her port bow; that when the two vessels were about 2 miles apart the Steamer "Svea" gave one blast on her whistle and received no response from the "Newport"; that when

(Testimony of Fred Warner.)

they were about a mile apart the Steamer "Svea" blew four blasts on her whistle and still no response from the "Newport"; that the Steamer "Svea" when the vessels were between three-eighths of a mile and half a mile apart gave a second four-blast danger signal and received no response from the "Newport"; that at no time did the officers on the "Svea" see any steam escaping from the whistle of the "Newport"; that the Steamer "Svea's" course and speed were maintained and that the bearing of the "Newport" did not change appreciably; that in the course of her progress towards the "Newport" the mate on the bridge of the "Svea' 'put his glasses on the "Newport" and did not see anybody on the bridge, either of the officers, the mate or the captain on the bridge of the "Newport"; that at no time did the "Newport" show any tendency to change her course, her speed, or reverse, or do anything to keep out of the way of the "Svea", so far as could be seen on the "Svea"; under those circumstances, as a master mariner, what would you say an ordinarily prudent navigator would do?

MR. DORR: At what point, Mr. Mackey?

Q BY MR. MACKEY: Under that state of facts, Captain, would there be any point along the course of the "Svea" at which you would judge an ordinarily prudent navigator would have altered the course or speed of the "Svea"?

A When he got within the three-eighths to half a mile?

Q Yes.

A Yes, getting that close, I would have stopped the ship, stopped the ship and backed her up.

(Testimony of Fred Warner.)

Q Why?

A Well, I would know at that close distance that he was not going to give me the right of way.

Q What would indicate to you that he was not going to give you the right of way?

A Well, I could tell by the ship that he was not going to give me the right of way, no ifs or ands about it, being that close and would not answer the signals, I would know he was not going to give me the right of way.

Q Would there be any danger to the "Svea" in stopping and reversing or backing, that close?

A No.

Q Why not?

A Well, when she backs she would back port pretty heavily at that close, whatever the "Newport" did, if she did anything, I know very well she would swing and would be pretty well in safety, if he ported his helm all the time, and her head would follow off to the starboard on a parallel line with the "Newport".

Q When you say the steam schooner would back portt, what do you mean?

A Her stern would swing to port.

Q That is, her stern would swing to the left?

A Yes, and her head would swing to the starboard.

Q When you say to the starboard you mean to the right?

A Yes.

MR. MACKEY: That is all.

(Testimony of Fred Warner.)

CROSS EXAMINATION

BY MR. DORR:

Q You say there would be no danger to the "Svea", no matter what the "Newport" did?

A Did I what?

Q I understood you to say there would be no danger to the "Svea" no matter what the "Newport" did.

A I would not figure there would be any danger.

Q In other words, whatever direction the "Newport" would turn, the "Svea" would be perfectly safe?

A Yes.

Q In other words, at that time there would be time for the "Newport" to change her course?

A My idea would be when I saw them getting that close, after all of those signals and he did not answer, I would know he was not going to give me the right of way.

Q Captain, have you been a master on steam schooners?

A Yes, sir.

Q What type of vessel?

A Engines aft.

Q About the same type as the "Svea"?

A Yes.

Q Running in and out of San Francisco?

A Yes, running in and out of this port and up north.

Q And San Pedro?

A Yes.

Q Haven't you found it a tendency on the part of these passenger ships to shave close at times?

(Testimony of Albert Winslow.)

MR. MACKEY: I object to that question as immaterial. What other passenger ships do is not material here.

MR. DORR: He never navigated the "Svea". He navigated other steam schooners.

THE COURT: I think it goes to the question of what ordinary prudence would indicate, as a general rule. Overruled.

Q BY MR. DORR: Haven't you found a tendency on the part of these passenger ships to shave close at times?

A No, my experience has been the other way.

Q You never noticed that?

A I haven't noticed that. My experience has been that it has been the other way.

Q You think you would have taken the action you mentioned when you were three-eighths to a half a mile away from the "Newport"?

A I know I would.

MR. DORR: That is all.

Q BY MR. MACKEY: Do you think an ordinarily prudent navigator would act as you say you would act?

A Absolutely.

MR. MACKEY: That is all.

ALBERT WINSLOW,

called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MACKEY:

Q What is your occupation?

(Testimony of Albert Winslow.)

A Master mariner.

Q How long have you been going to sea?

A Right onto 27 years.

Q Do you know the "Newport"?

A Yes sir.

Q Do you know the "Svea"?

A Yes, sir.

Q Captain, the evidence in this case shows the following: On the morning of November 29th, about 9:53, between 9:30 and 9:53, a bright, clear sunshiny day, visibility was between 12 and 15 miles, light northwesterly wind, light moderate swell, and that the Steamer "Svea" was proceeding on a course northwest by north one-half north, magnetic, speed 7½ to 8 miles an hour; that the Steamer "Newport" was proceeding on a course east by south, magnetic, speed 9 to 10 miles an hour; that the Steamer "Newport" was heavily loaded and the Steamer "Svea" was light loaded; her engines are aft; that her draft forward was 7½ and her draft aft was 14 feet; that when the vessels were 8 miles apart the "Svea" sighted the "Newport" bearing about 3 points on her port bow; that when the vessels were about 2 miles apart the "Svea" blew one blast on her whistle; that when they were about 1 mile apart she blew four blasts on her whistle; and that when they were between three-eighths of a mile and half a mile apart she blew another signal of four blasts on her whistle; that she received no reply from any of those signals from the "Newport", nor did she see any steam escape from the "Newport's whistle; that she kept her course and speed throughout; that the mate of the "Svea", who was

(Testimony of Albert Winslow.)

on her bridge, looked at the "Newport" as they proceeded along the course, and saw no one on the bridge of the "Newport", neither the mate nor master, and with the naked eye saw nobody on the bridge of the "Newport" at the time of the collision; that the bearing of the "Newport" remained the same all the time; that at no time did it appear to those on the bridge of the "Svea" that there was any change of course or change of speed on the part of the "Newport"; that she appeared so far as they could see to be going along the same during the entire time; that the "Newport" was in sight of those on the "Svea" from the period of 9:20 until 9:53, at the time of the collision. State whether in your opinion under those curcumstances there would be any time or any place along the line of the "Svea's" course when an ordinarily prudent navigator would have deemed it good seamanship to have changed the course or speed of the "Svea"?

A Shall I answer now?

Q Yes.

A Well, surely after he blew—

MR. DORR: You can answer that yes or no.

Q BY MR. MACKEY: Answer that yes or no. I have asked you whether there was any time or place when an ordinarily prudent navigator on the "Svea" would have deemed it good seamanship to have changed her course or speed. What would an ordinarily prudent navigator have done, and when?

A Well, there is a little rhyme that goes with that, your Honor. When I was a little boy I learned a little rhyme pertaining to that. "To act as judgment says is proper, to port or starboard, back or stop her."

(Testimony of Albert Winslow.)

Q What would you have done, and where?

A I might have run a little more after he blew his first whistle and before I got the danger signal, but there would be no time that I would run my ship into danger.

Q When would you consider it necessary to change either your course or your speed?

A Any time after I gave the danger signal; as soon as he did not answer my passing signal I would give him the danger signal and I would know there was something the matter aboard that ship.

Q You say you have been going to sea 27 years?

A No, onto 27 years.

Q You learned that rhyme when you started in?

A As a boy, yes.

Q At that time the rules of the road required two vessels approaching each other to both stop, slacken, and reverse, did they not?

A I don't think there was any change in the rules of the road from the time I was 14 years old up to the present time.

Q Were you 14 years old before 1897?

A I was born in 1883, the 2nd of September.

Q You would have been 14 in 1897?

A I say I was born in 1883, the 2nd of September, and I am going on 41 years of age now.

Q At any event, you know of no change in the rules of the road?

A I don't think there has been any.

Q Your idea is that you would have changed your course at the time of that first danger signal, which was blown there, and the vessels were more than a mile apart?

(Testimony of John O. Blanchfield.)

A Not necessarily so. I might have run a little more. As I said before, I would never let my ship get in danger with the other ship.

Q If you thought there was any possibility that the other vessel was not going to live up to the rules of the road, what would you do?

A I would not take any chances on what the other man would do at any time.

Q The rules require you to hold your course and speed?

A Yes; it also says to eliminate collisions at all times.

Q You can not figure on that without figuring on what the other ship was going to do?

A I never figure on what the other fellow is going to do. I know what I am going to do at all times.

Q What is your present occupation?

A At present I am working as a stevedore.

Q You are not going to sea now?

A No.

Q What were you captain of last?

A I was captain of the Steamer "Yale", but lost the captaincy on it.

MR. DORR: That is all.

JOHN O. BLANCHFIELD,

called as a witness on behalf of the respondents, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MACKEY:

Q Captain, what is your occupation?

A Master mariner.

(Testimony of John O. Blanchfield.)

Q Did you hear the state of facts as I stated them to Captain Winslow?

A I did.

Q Under the circumstances as I stated them to Captain Winslow, would there be any place or time along the course of the "Svea" when in your judgment an ordinarily prudent navigator would have stopped or reversed or taken some action on her part to have avoided a collision?

A Absolutely.

Q When and where would that action ordinarily be taken by a prudent navigator?

A I would have stopped my ship before I blew the second danger signal if I saw no indication of life on the "Newport's" bridge.

Q Why would you have done that?

A After looking at the "Newport" with my glasses and not noticing any sign of life I would have come to the conclusion that she was not going to change her course, and to save my ship from going into any danger I would have stopped the ship and found out what the other fellow was going to do, and not make any more headway. That would have given him a chance to clear and keep going.

MR. MACKEY: Cross examine.

CROSS EXAMINATION

BY MR. DORR:

Q Are you familiar with the construction of the "Newport", Captain?

A Yes, sir.

Q Have you ever been on her bridge?

(Testimony of John O. Blanchfield.)

A No, I have not.

Q Are you a pilot?

A I have a pilot's license in San Francisco.

Q By what company are you employed?

A None.

Q What was the last company?

A Luther J. Olson.

Q Captain, the time that you referred to as stating you would have stopped your vessel after the first danger signal. That was when the vessels were a considerable distance apart?

A I would have known by the evidence. The mate said that he didn't see any life on the "Newport's" bridge, and I would have known that there would be something wrong on that vessel.

Q Captain, at that distance of a mile apart would it have been possible for the "Newport" to have starboarded her wheel hard over to swing around and miss the "Svea"?

A Yes.

Q At a mile and even closer?

A Even closer, yes.

MR. DORR: That is all.

REDIRECT EXAMINATION

BY MR. MACKEY:

Q Would there have been any danger to the "Svea" taking any course you suggested?

A No danger at all. If he stopped he would have his vessel under control. He could go ahead or back or anything as long as he had his headway off the vessel.

(Testimony of John O. Blanchfield.)

Q I don't know whether I understood you correctly or whether Mr. Dorr did. His last question indicated that he understood you had testified that you would have taken your action immediately when the first danger signal was blown.

A That would depend upon the distance I was away from the other vessel.

Q Assuming the distance as I have stated in the statement of facts to Captain Winslow, as being a mile, would you have taken your action at that time or would you have waited?

A I would have waited until I got a little closer and probably have given them another danger signal.

Q Would there have been any hesitation on your part after you had given the second danger signal?

A No hesitation at all.

RECROSS EXAMINATION

BY MR. DORR:

Q You didn't see anything wrong with the navigation of the "Svea" until after the second danger signal?

A She used very poor judgment, very poor seamanship.

Q You would have stood exactly as he did up until the time she blew the second danger signal?

A I would have.

MR. DORR: That is all.

MR. MACKEY: That is our case.

MR. DORR: We have no rebuttal.

THE COURT: Now, gentlemen, I don't care for any argument on the facts, unless there are some decisions to be cited.

(Argument of counsel omitted.)

THE COURT: The case will be submitted.

Filed May 1, 1926. Chas. N. Williams, clerk, by L. J. Cordes, deputy clerk.

[Title of Court and Cause.]

BE IT REMEMBERED: That on Friday, December 22, 1922, pursuant to stipulation of counsel hereunto annexed, at the offices of Messrs. ANDROS & HENGSTLER, in the Kohl Building, in the City and County of San Francisco, State of California, personally appeared before me, E. M. CLARK, a Notary Public in and for the City and County of San Francisco, State of California, authorized to administer oaths, etc., JOHN MC KEOWN, CHARLES S. SEMSEN, and KARL ROHBERG, witnesses called on behalf of the Libelant.

F. W. DORR, ESQ. appeared as proctor for the Libelant, and RUSSELL A. MACKEY, ESQ., representing Messrs. MC CUTCHEN, OLNEY, WILLARD, MANNON & GREENE, appeared as proctor for Respondents, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the depositions of the above-named witnesses may be taken de bene esse on behalf of the Libelant at the offices of Messrs. ANDROS & HENGSTLER, in the Kohl

(Testimony of John McKeown.)

Building, in the City and County of San Francisco, State of California, on Friday, December 22, 1922, before E. M. CLARK, a Notary Public in and for the City and County of San Francisco, State of California, and in shorthand by CHARLES R. GAGAN.

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to materiality, relevancy and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof are hereby expressly waived.)

(Title of Court and Cause.)

JOHN MC KEOWN,

Called for the Libelant; Sworn.

MR. DORR: Q. Mr. McKeown, you are employed by the Pacific Mail Steamship Company, are you? A. Yes.

Q. On board the steamship "Newport"? A. Yes.

Q. As third officer on the steamship "Newport"? A. Yes.

Q. You were so employed on the 29th of November, 1922? A. Yes.

Q. What time on November 29th did you go on watch? A. 8 a. m.

Q. Did you remain on watch until 12 m? A. Yes.

(Testimony of John McKeown.)

Q. What were the weather conditions during your watch?

A. Fine and clear.

Q. How far could you see? A. Approximately 10 miles.

Q. How far off-shore were you? A. We were about 13 miles off-shore.

Q. Could you see the land? A. No, you could see the loom of it.

Q. Did you see the steam schooner "Svea" during your watch?

A. Yes.

Q. At what time did you first see her? A. Approximately 9:45.

Q. How far off was the "Svea" when you first saw her?

A. She was about a mile.

Q. What was the bearing of the "Svea" from your ship when you first saw her? A. Four points on the bow.

Q. On which bow? A. On the starboard bow.

Q. From the time you first sighted the "Svea" thereafter until about 9:53 a. m., was she at all times on your starboard bow?

A. Yes.

MR. DORR: That is all.

MR. MACKEY: No cross-examination.

———x———

(Testimony of Charles S. Semsen.)

CHARLES S. SEMSEN,

Called for the Libelant; Sworn.

MR. DORR: Q. You hold a master's license, do you, Captain?

A. Yes.

Q. You were formerly mate on the steamer "Svea"? A. Yes.

Q. Were you mate on the "Svea" on November 29th, 1922? A. Yes.

Q. Where was the "Svea" bound on November 29, 1922?

A. Bound to San Francisco from Ventura.

Q. Were you on watch on the morning of November 29, 1922?

A. Yes, from 8 until 12.

Q. You went on watch at 8 o'clock in the morning? A. Yes.

Q. Where was the "Svea" at that time? A. She was just about abreast of Point Buchon, about twelve miles north of Point Los Angeles—Port Harford.

Q. About how far off-shore? A. About 12 miles.

Q. When you went on watch at 8 o'clock in the morning, what course were you steering? A. Steering northwest.

Q. Magnetic? A. Yes; that was the course by the pilot house compass, it is the same thing.

Q. You say that was your course by the pilot house compass? A. Yes.

Q. How long did you continue on that course? A. We changed the course at 9:15.

(Testimony of Charles S. Semsen.)

Q. What was your course after that? A. Northwest by north, half north.

MR. MACKEY: Q. Is that magnetic, or pilot house? A. That is pilot house. We always steer magnetic courses.

MR. DORR: Q. How much deviation did you have? A. There was no deviation on that heading, it was practically a magnetic course.

Q. No deviation on that heading? A. No.

Q. How long did you continue on that course? A. Right along up to the accident.

Q. What time was that? A. It was 9:53, I think it was.

Q. By the accident, are you referring to a collision with the steamship "Newport"? A. The accident we had with the "Newport", yes.

Q Captain, how was the weather on the morning of November 29? A. It was a nice, clear morning.

Q. No haze of any kind? A. No, it was good weather.

Q. Sun shining? A. The sun was shining that morning fine.

Q. How far could you see? A. I could see the land plain all over; I could see about 15 miles anyway.

Q. You could see at least 15 miles? A. Yes.

Q. Was there any wind? A. A little wind from westward, northwestward.

Q. Was there any swell? A. Yes, a westerly swell; quite a swell on.

Q. What was the purpose of changing the course? A. Getting in under the land, I suppose. The captain

(Testimony of Charles S. Semsen.)

changed the course himself. We generally hug the land to get out of the seaway and wind.

Q. Where would your course take you, about what point on the land? A. It would take us in a little to the southward, I should think, of the Piedras Blancas Light.

Q. What time did you first sight the steamer "Newport", according to your best recollection? A. I seen her for quite a while; I could not exactly remember the time.

Q. And how far off was she? A. She was about five or six miles.

Q. You saw the Newport five or six miles off? A. Yes.

Q. How did she bear from your vessel? A. She was about three points on our port bow, perhaps a little more. I did not take any bearing of her.

Q. Was anyone else on the bridge besides yourself.

A. The Captain was there.

Q. Could you see her plain at that time? A. Oh, yes, you could see her plain.

Q. From that time on to the time of the collision was the "Newport" always on your port bow? A. Yes.

Q. What change, if any, did you make in your course? A. We did not change any.

Q. Did you change your speed? A. No, sir.

Q. What speed was the "Svea" making? A. I should think about 8 miles at that time.

Q. Was she light? A. Empty.

Q. Did you make any signals on your whistle? A. We blowed one whistle when she was close to us, very close.

(Testimony of Charles S. Semsen.)

Q. How far away were you when you blew one whistle? A. About two miles.

Q. Was there any answer from the "Newport"? A. No, sir.

Q. What did you do after that? A. We kept our course and kept our speed. Later on we blowed four whistles, four short whistles.

Q. You mean on your vessel? A. Yes.

Q. What kind of a whistle did the "Svea" have? A. She had a good whistle, a very good, strong whistle.

Q. Have you any idea how far it could be heard on a morning of that kind? A. You could hear it easy four or five miles—five miles. She had a very good, strong whistle, a very coarse whistle.

Q. How far away were you when you blew four whistles? A. Perhaps a mile off. He did not notice our first whistle, and we waited a while, and then we blew several small whistles, the captain did, so as to draw his attention. There was no answer to that, either.

Q. The captain blew the whistles, did he? A. Yes.

Q. After you blew the four short blasts, then what did you do? A. We waited a while, expecting him to take action; he was closing in on us and we blew four more when he was close in.

Q. How far away were you from the "Newport" when you blew the last four blasts? A. You mean the second four?

Q. Yes. A. We were about a shiplength off.

Q. Then what did you do? A. We couldn't do nothing except keep our course full speed ahead. I said just a few seconds before, I says to the old man,

(Testimony of Charles S. Semsen.)

"There is a collision here, you had better port." He says, "I know there is, we can't get out of it now." So I says, "Port a little bit," but our vessel didn't have any time to swing.

Q. You mean you said to the man at the wheel to port the helm? A. Yes; I hardly had a chance to speak much before he was right on top of us. We tried to avoid a head-on collision, we were trying to swing so as to get a glancing blow in order to save ourselves.

Q. At the time you gave the command to port, was there any possibility of avoiding the collision? A. Oh, no, we couldn't get out of it then.

Q. Where did the "Newport" strike the "Svea"? A. About two beams beyond the hatch, that is, about midships.

Q. On which side? A. Port side.

Q. Near the main rigging? A. About 15 feet forward of the main rigging, I should judge, just about 15 feet; I didn't measure it.

Q. What damage, if any, was done to the "Svea" when the "Newport" struck her? A. She came right head in, she went through the rails and bulwarks.

Q. Did she cut through the side of the ship? A. Yes, she cut through so far as I could see. I looked over and she did, as far as I could see.

Q. Above and below the water line? A. Yes, above and below the water line. I put a rope around myself and went and looked to see what we could do to stop the water from pouring into her.

Q. After the "Newport" struck you, then what happened? A. She backed out of the hole. Of course,

(Testimony of Charles S. Semsen.)

her engine was stopped. I stopped her just as she hit us. I stopped her engine just as soon as he struck us. Then after he backed out I gave a kick ahead then, because he swung alongside of us like this and hit us a couple of times.

Q. You mean both vessels were pointing in the same direction? A. Yes, both vessels pointing in the same direction. We were under his bow then and he was kind of jumping on us, and I gave her a kick ahead then so as to get clear of him.

Q. You stated that you stopped the engines just as she struck? A. Just as she struck, yes.

Q. Did you operate the telegraph yourself? A. I did at that time, yes.

Q. On the bridge? A. Yes.

Q. Was there any change in the speed of the "Svea" prior to that time? A. No, sir.

Q. How long did the engines of the "Svea" remain stopped then? A. As soon as he backed out, and, as I say, as he done so he hit us a couple of times on the side, and so I gave her a kick ahead; that must have been perhaps five or six minutes.

Q. Did you remain on the bridge? A. Yes, I was on the bridge at that time right along.

Q. Did you remain on the bridge after that? A. I stayed there until we got away from him, yes.

Q. Were there any words exchanged between the "Svea" and the "Newport"? A. No, sir, except the only word I heard, they hollered from the "Newport" to stay by them. That is all the word I heard said.

Q. Who hollered? A. Someone, I couldn't say who it was.

(Testimony of Charles S. Semsen.)

Q. Did they ask you whether or not you were damaged? A. No, I didn't hear anything.

Q. What did you do after the "Newport" got free of you? A. We tried to follow; we started off, and we tried to follow him. Of course, he was going too fast for us, and we couldn't. He was heading in for the land then, too—I mean the "Newport" was. I passed the remark, "I guess she is trying to make Port Harford." I said that to the captain. I said, "That is the place we ought to make if we can." He went so fast, and then I seen him swinging to the southward.

Q. Away from the shore? A. Along the shore, going southward.

Q. Towards Arguello? A. Yes, towards Point Arguello. We blew several whistles after him.

Q. What whistle signals did you make after that? A. Several short-blast whistles.

Q. What did you do that for? A. I don't know. The old man did that. We set the flag in the main rigging. We set the N. C. flag.

Q. What does "N. C." mean? A. That is the distress flag.

Q. Is that the International distress signal? A. Yes, with the flag square above the ball; there is a round ball in that flag.

Q. How far away was the "Newport" when you blew your several blasts of the whistle? A. She could not have been more than two or three miles. He was going all the time away from us while we were whistling.

Q. Did she pay any attention to your whistle signals? A. No, sir, I never heard one whistle from that boat.

(Testimony of Charles S. Semsen.)

Q. Then what did you do after that? A. The engineer came and reported she was making so much water, it was gaining on him, with all the pumps going. I ordered a man to the hand pump to help them out. We steered straight in for the land, and tried to make land. There was nothing in sight, outside of the "Newport" —well, I saw the mast of one vessel away out. We had no wireless or anything to report anything, except flags. That is all we had—flags.

Q. How long did you continue in toward the land? A. I think it was until about a quarter after eleven we got to within a mile and a half of land.

Q. Were you still working your engines then? A. At last they were not working the engines. They were floating then. We were going along with the sea.

Q. Were your fires out? A. They fires were out.

Q. Were you taking much water? A. She was about full of water then.

Q. Then what did you do? A. Then we got to anchorage. We got 19 fathoms of water and we anchored.

Q. What did you do after that? A. We put one boat out, after we got in there. We kept steam on the donkey boiler with a little fire-wood, she couldn't use any oil because we had no way of getting the oil. We put one boat overboard and the second mate and three men went ashore to communicate. He had to walk eight miles from where we were laying in to Port Harford. He went to Mr. Sullivan, the agent for the Pacific Coast Company. He got a telephone there. They sent three launches out to help us and stay by us.

(Testimony of Charles S. Semsen.)

Q. How long did you stay in the ship? A. I stayed by her until she turned over.

Q. When was that? A. It was half past eight when we went in the boats, about that time; I didn't look at my watch, but it was about that time. I was sitting there in the boat. She was laying over this way. At a quarter past eleven she fell right over, with her mast and rigging in the water.

Q. That was 11:15 p. m. on the same day? A. Yes. We had two launches with us then. The second mate and myself and the chief engineer were in the boat.

Q. And the captain? A. The captain went ashore with one of the launches. Mr. Sullivan tried to get some tools, and to get another chain, and so on. That was about half past eight. The captain came back about twelve o'clock.

Q. And after she turned over you went ashore? A. Yes, she was lying on the side, there, with her rigging and everything in the water. The next morning the captain went out there and found her bottom-up.

MR. DORR: That is all.

CROSS EXAMINATION

MR. MACKEY: Q. How long have you been going to sea, Mr. Semsen? A. Since I was 14 years old.

Q. How long have you been on the "Svea"? A. Four months, or a little over. I think I joined her on the 11th of July.

MR. DORR: Let the record show that the libelant at this time produces the log-book of the steamer "Svea".

MR. MACKEY: The deck log-book.

MR. DORR: Q. That is the only one you keep, isn't it? A. That is the only one, yes, sir.

(Testimony of Charles S. Semsen.)

MR. MACKEY: Q. Do you keep a deviation book on board the ship? A. No, she had only a deviation card. There was very little deviation in the compass.

Q. How do you know there was very little deviation in the compass? A. Because we took our courses according to the standard compass. We always took standard compass.

Q. You pilot most of the time, don't you, by a point along the coast? A. Yes.

Q. How long had it been since you swung ship? A. Well, she had not swung ship since I came on board of her.

Q She was practically magnetic throughout the whole compass? A. Oh, no, there may be a little variation, a couple of degrees or so.

Q. How much deviation do you suppose there would be on her northwest course? A. I don't think there was more than one degree; that is about all.

Q. Easterly or westerly? A. As far as I know, I think there was an easterly deviation.

Q. And this course, northwest by north, half north, how much deviation would there be on that course? A. Not any, I don't believe, so far as I know.

Q. Do you know whether or not there was any? A. No, I can't remember that.

Q. Have you any records that show whether there was any deviation on that course? A. No; the log-book shows nothing there.

Q. I don't see anything here on deviation. A. Sometimes we took standards. You might find it in some other place.

(Testimony of Charles S. Semsen.)

Q. You do not know, as a matter of fact, whether there is any deviation on that course? A. I don't suppose it could be much, any way.

Q. What color is the "Svea"? A. She was black painted.

Q. All over? A. Her outside is black, and white houses.

Q. Black to the water-line, is she? A. Yes.

Q. When was she painted? Has she been painted since you were on her? A. No, sir.

Q. Not painted since you were on her? A. No, sir.

Q. What was her draft at the time of the collision, if you know? A. When she was light?

Q. Yes. A. She draws about 16 feet aft.

Q. How much forward? A. She draws about nine, I guess.

Q. What would be the distance from, say, the top of her rail at the forecastle head to the water, when light? A. I should think about 20 feet.

Q. Then where the forecastle head breaks, you have a space off the rail, there, that is not so far above the water, do you not? A. Well, is is about 8 feet, I guess, where the break of the forecastle head is.

Q. The forecastle head is about 8 feet above the main deck? A. Yes, about that.

Q. And that would put the main deck about 12 feet above the water? A. About 12 feet above the water; that is, away forward.

Q. And as you go aft she gets closer to the water? A. Yes, she tapers down, slopes down.

Q. You have two masts? A. Yes.

(Testimony of Charles S. Semsen.)

Q. And the deck-house is all aft? A. Yes.

Q. What is the maximum speed of which the "Svea" is capable? A. We have had her up to over 9.

Q. There was quite a swell at the time of this collision, was there not, quite a ground swell? A. Yes, quite a little swell.

Q. Were you pitching quite a bit, or were you rolling? A. We were rolling some. She always rolls. She rolls as if she were in dry-dock.

Q. She is pretty unsteady? A. Yes.

Q. As you proceeded on the course northwest by north, half north, was the swell hitting you on the port quarter, or was it hitting you right abeam, or right ahead? A. That ought to be two points forward of the beam, in a northwesterly sea. That is an angle of six points.

Q. So she would be hitting you on the port bow? A. Yes.

Q. That would give you a kind of a corkscrew motion as you went over the swell, wouldn't it? A. Yes, it seemed worse than a corkscrew motion sometimes—there is no question about that.

Q. You saw the "Newport" five or six miles away? A. Yes.

Q. And she was at that time on your port hand? A. Port bow, yes.

Q. You saw her clearly, did you? A. Yes, I saw her clearly.

Q. Could you make out her name at that time through the glasses? A. I didn't look at her the first time through the glasses.

(Testimony of Charles S. Semsen.)

Q. She bore at that time about three points on your bow? A. About that.

Q. And that bearing stayed the same throughout, practically? A. Not much changing. She was practically coming in the same direction.

Q. And when you were about two miles away, you blew one blast on your whistle? A. Yes.

Q. You knew that if you kept on that course and that if she kept on her course there would be a collision, didn't you? A, Oh, no, that I would not know.

Q. You knew there had been no changing in the bearing? A. Well, very little, but I didn't know whether there would be a collision.

Q. I mean that at that time you knew from the fact that there had been no change of bearing that if one or the other of you did not give way that there would be a collision, did you not? A. Well, he was to give way, because we had the right of way.

Q. Just answer the question. You knew that the bearing had not changed, didn't you? A. Not very much, no.

Q. And when the bearing does not change, that means that if the vessels don't alter their course or speed—one of them, at least, they are coming together, does it not? A. Well, according to the position they are in, yes.

Q. It does not make any difference about the position, if their bearing stays the same they are going to come together, unless the bearing changes? A. If they are headed toward each other, yes.

(Testimony of Charles S. Semsen.)

Q. If you see a vessel on one of your bows and her bearing stays the same, does that not mean to you that if one of you does not change either course or speed, that you are going to collide? A. Yes, but it is just according—we may collide, but at the same time if I have a right of way, I am supposed to keep to my right of way.

Q But if the bearing does not change, it means you are going to come together, unless one or the other gives way: That is true, isn't it? A. I suppose that would be true.

Q. Don't you know that that is the fact? A. Well, we must come together.

Q. Unless the bearing is changed, you will come together, unless somebody changes the course or speed? A. We didn't change ours.

Q. That is the fact, isn't it? A. Yes, we didn't change ours.

Q. I don't contend that you changed yours. I just want to get you clear on that point. When you were about a mile apart you blew four blasts? A. Yes.

Q. What was the reason for blowing four blasts? A. The captain blew four blasts to draw his attention; he did not answer our first whistle.

Q. When was it you put the glasses on the "Newport"? A. That was before that, before he blew the one whistle.

Q. You didn't see any activity on her at all, did you? A. No.

Q. She gave no evidence of changing her course? A. I could not say that. She may swing a point or

(Testimony of Charles S. Semsen.)

so, but sometimes you can't always realize that in so short a distance.

Q. Did you tell the captain she was not changing any? A. No, I didn't say that to the captain.

Q. Did you tell the captain her bearing had not changed any? A. We were standing there talking, and I was passing a remark about her, where she was bound for. I said, "She looks as if she is heading in to Port Harford." I used to run there myself, years ago, in Pacific Coast boats.

Q. That was before you found out that she was the "Newport"? A. I looked through my glasses later on, and I said, "That is the 'Newport', she don't run in there."

Q. You found that out before you blew the one whistle? A. Yes.

Q. And when you put your glasses on her, you saw no activity on the bridge at all? A. No, sir, I never did.

Q. Between the time you blew the one whistle and the time you blew the first four-blast signal, did you have your glasses on her from time to time? A. Not right along.

Q. Did you have your glasses on her from time to time during that interval? A. I don't remember if I did, or not, but I never saw anybody on the bridge.

Q. Did you look for anybody? A. Yes, I looked up there, and I passed the remark to the old man, "I don't see anybody on the bridge." I didn't know why they didn't answer the whistles.

(Testimony of Charles S. Semsen.)

Q. That was before you blew the first four blasts? A. Yes.

Q. You never say anybody? A. No.

Q. And you didn't hear any signals? A. No.

Q. And she didn't seem to be changing at all? A. Not to me.

Q. And her bearing seemed to be the same? A. I didn't take no bearing of her, but her position looked to be the same.

O. And you kept your course and speed? A. Yes.

Q. After the second four-blast signal, you were pretty close together, were you? A. Yes.

Q. How far apart? A. About a ship's length.

Q. On of your ship lengths, or one of hers? A. Say about 200 feet.

Q. About 200 feet? A. Something like that.

Q. You said before the Inspectors about 250 feet, didn't you? A. Well, maybe 250 feet; it is very hard to say the exact distance.

Q. It might be 300? A. It might be 300 for all of that.

Q. That was when you blew the second four-blast whistle? A. Yes.

Q. The four-blast signal was the ordinary danger signal that is sounded in case of danger? A. Yes.

Q. That is what is known as a danger signal? A. That is what it is supposed to be.

Q. And at no time did you see any activity on the bridge of the "Newport"? A. No, sir, I never did.

Q. She gave no indication of doing anything but holding her course and speed? A. That is all I could

(Testimony of Charles S. Semsen.)

see. She came along pretty fast. I could not say what they were doing there.

Q. You were on the bridge? A. Yes.

Q. And the captain was on the bridge? A. Yes.

Q. And you had a helmsman down below in the pilot house? A. Yes.

Q. Did you have anybody up on the fore-deck, at all? A. All hands were on deck.

Q. They were doing work around the deck, were they? A. They were cleaning up the ship that day. Most of them were all aft on the quarter-deck. They were cleaning up.

Q. Nobody else was on watch? A. The deck crew was on deck.

Q. You didn't have anybody on watch, on the top side, except yourself and the captain and the man at the wheel? A. Nobody else on the bridge. That is all we want, one man at the wheel. It was a nice, clear day. If it was a foggy day, we would have had a man on the lookout. But it was a nice, clear day. There was a man just cleaning up on the quarter-deck, there.

Q. And you say you were making about eight knots? A. Yes, about that; it may be a little bit more or less; it is hard to remember all those points.

Q. If you put your helm on the "Svea" hard to port, and going eight knots, how long will it take you to turn around? Do you know what your turning radius is? A. She will take quite a little swing sometimes, more or less, and it depends on the current, and on the headway.

(Testimony of Charles S. Semsen.)

Q. In still water. A. In still water sometimes she acts quick and other times slow.

Q. Say in still water. A. In still water she will take pretty nearly half a mile to swing around on one wheel.

Q. What do you mean by "one wheel?" A. With the wheel hard over.

Q. Do you think she will take that far? A. Sometimes she would, I think, except that you back her and help to throw her around the other way.

Q. If you are light, that means the forepart of your ship is well out of the water, doesn't it? A. Yes.

Q. She will turn pretty rapidly then, won't she? A. Not always. I have seen her helm bucking for half an hour trying to get around.

Q. Why? A. Because she wouldn't answer the wheel.

Q. Was that when you did not have any headway on? A. We had a little headway, too.

Q. She will spin pretty well around on her stern if there is not any current or wind to hold her back, won't she? A. I think she will, yes. She will go around in probably four or five shiplengths.

Q. Won't she go around in less than that? A. Not much; she makes quite a circle.

Q. The turning radius would be two ship lengths—the radius, itself. A. Well, maybe.

Q. If you are starting here and going around (indicating), the distance across the whole circle would be about four ship lengths? A. Pretty near.

Q. And the turning radius, itself would be about two ship lengths?

(Testimony of Charles S. Semsen.)

MR. DORR: Q. What is the length of that ship? A. I am not sure, but I think it is about 160 feet. I am not sure of that.

Q. 178. A. I know it is something like that—178. She will take three ship lengths, anyhow, to go around. That is 500 feet.

MR. MACKEY: Q. She will swing in about 500 feet? A. Yes, probably in that. She acts pretty good in doing that. She should act a little quicker when light, because she is not so heavy.

Q. With the wind on your port bow and the swell on your port bow, she would go around a little faster, wouldn't she? A. Not always. Sometimes the wind is just opposite. Sometimes the sea might hit her on the quarter and keep her bow up.

Q. But with the swell that you had out there that day, and what wind there was would be helping her, rather than holding her back? A. The wind was very light, it was not much to speak of. It was mostly seaway.

Q. Going at 8 knots, and putting your engines full astern, how far will the "Svea" travel before she comes to a stop? A. You may be able to stop her in about two lengths, or two and one-half; that has to be a pretty good favor, though.

Q. What do you mean by a good favor? A. Well, a good head sea, or something like that, just to dive into, like.

Q. As it was on that day of the collision, how far would you say? A. She may have stopped in two ship lengths, or two and one-half; it was not quite ahead, it was on the beam.

(Testimony of Charles S. Semsen.)

MR. DORR: Was that with the engines full astern —was that what you meant?

MR. MACKEY: Yes.

A. (Continuing) I never tried it, though. The captain could tell you more about how long that would take, because he has been with her a long time.

Q. Did you have any tarpaulin aboard the ship? A. Yes.

Q. Did you make any attempt to block up the hole through which the water was coming? A. Yes.

Q. What did you do? A. I got a tarpaulin and tried to get it over that hole.

Q. When did you do that? A. On the way going in there.

Q. Was that before or after you hoisted this distress flag that you spoke of? A. That was after we hoisted the flag.

Q. It was after you hoisted the flag? A. Yes.

Q. Was the hold full of water at that time? A. No, it was not full of water.

Q. How much water was there in it? A. It was about one-third full, perhaps—not quite that much.

Q. How far off the beach were you at that time? A. We were going toward the beach. The fires were out in the engine-room then.

Q. How far off the beach were you? A. When I got that tarpaulin?

Q. Yes. A. I tried to get the tarpaulin when we got in toward the beach, when we got fully in, right next to the beach.

(Testimony of Charles S. Semsen.)

Q. That was after your engines were stopped? A. Yes. We tried to cover it over.

Q. Was that after you dropped anchor? A. Yes, I think it was after we dropped the anchor—come to think of it now.

Q. How did you rig that tarpaulin? A. With ropes.

Q. Describe how it was done. A. We put a rope underneath the bow.

Q. You dipped your rope underneath the bow? A. Yes.

Q. Did you have one thickness of tarpaulin, or two? A. I had one thickness of a brand new tarpaulin, a tarpaulin I made myself on board.

Q. Did you ever get it down over the hole? A. I had it down over the hole, yes; how far down it was I could not say, but I know I got it pretty well down.

Q. How big a tarpaulin was it? A. It was the size of the hatch. I think it was about 28 feet long; I think it was 17 feet wide.

Q. And you put one thickness over the hole? A. Yes.

Q. All the water was coming in that one hole, wasn't it? A. That I could not say. It was coming through the skin on the inside, so far as I could say, and in different places. But that skin is always open more or less.

Q. If you had stopped up that one hole your pumps would have been able to keep the water out? A. That I could not say. I don't know how big a hole it was. I was trying to help keep it from going in.

Q. Was the tarpaulin painted, or not? A. We had one coat of this tarpaulin preparation on it.

(Testimony of Charles S. Semsen.)

Q. That makes it waterproof, does it? A. It is supposed to be waterproof, it helps.

Q. Did that stop the water from coming in? A. No, I don't think it stopped it very much. It kept gaining on us all the time.

Q. Did you see the water coming in the ship's side through this hole? A. Yes, you could see it pouring in through the skin.

Q. After you put the tarpaulin on, did it stop it any? A. The water came in just the same, as far as I could see. It gained so much then, it kept splashing up all the time.

Q. The hold was about one-third full when you put the tarpaulin over the hole? A. Yes, and over that, I guess.

Q. Why didn't you try to put that tarpaulin over it when you first hit? A. We tried to list her over with the water tanks; we emptied the fresh water tank out on that side. She was taking water then.

Q. Why didn't you try to put the tarpaulin over it first? A. The first thing we had to do was to get our boats ready, to get ready for the safety of the crew. We tried to follow up the "Newport". Before we knew it the water was gaining so fast that we had to look for our own safety.

Q. At first, you did not think there was any danger to yourselves? A. We kind of thought there was, because we saw the water pouring into the hold. We were down there looking. We had a man handling the pumps all the time, the hand pumps, to help along.

(Testimony of Charles S. Semsen.)

Q. When you dropped your anchor, the hole was not much more than a third full? A. Yes, I guess it was a little more.

Q. About how much more? A. It was over the keelson down there; I think that keelson is about five feet.

Q. How deep is the hold? A. 14 feet, I think.

Q. The keelson is 5 feet off the bottom of the hold? A. Just about my height, about five feet.

Q. How tall are you? A. I am 5 feet 7; it just about come to my eyes, and I can just about look over it.

Q. And the water was just over the top of that? A. Just about.

Q. That was at the time you dropped your anchor? A. I think that was about the time we dropped the anchor. I know there was lots of water in there when we dropped the anchor.

Q. How big was this distress flag that you say you put up, the N. C. flag? Is it a pennant? A. It is a universal flag. It is the regulation.

Q. Is it a pennant? A. It is two flags, N. C.

Q. Is the white flag a pennant? A. The white flag is a pennant.

Q. What is the other flag? A. Square.

Q. What color is it? A. Black and white. It is a square flag with the letter "N". It is just like a checker board.

Q. How big is the N. flag? A. I think the regulation is four feet; pretty near four-foot square, I think.

Q. Do you think it is that big? A. Pretty near that.

(Testimony of Charles S. Semsen.)

Q. And the white pennant? A. That is longer but narrower; about two feet.

Q. Two feet at the wide portion and then it tapers down to the end? A. Yes.

Q. Has it anything in it? A. A red ball.

Q. A red ball in the center? A. Yes.

Q. How far off the beach were you when you put those flags up? A. We were away out to sea.

Q. And the "Newport" was two or three miles away, was she? A. Yes, about that, about three miles, I guess, between two and three.

Q. I notice in this log-book you don't have anything at all about your course after the collision. A. We steered right straight in. We first tried to follow him, but he left us, and we headed right for the beach.

Q. And he headed right for the beach, first? A. Yes, as if he was going to Port Harford, and we were trying to follow him.

Q. When he headed for Port Harford, from where you were, he was almost headed toward the beach, wasn't he? A. Port Harford is a little to the southward. We anchored about eight miles north of Port Harford. The collision was about 12 miles. We anchored a little to the southward. When we got close to the shore we angled a little more, and then afterwards we had to make for the shore the best we could.

Q. How far away from him were you when you started to go in to the beach, too, I mean when you started to follow him? A. We started to follow him just as soon as we started up after the collision.

Q. What speed did you put your engines to? A. Full speed.

(Testimony of Charles S. Semsen.)

Q. Do you know that? A. Yes, as far as I know.

Q. Did you ring full speed on the telegraph? A. Yes, as far as I know.

Q. Right after the collision, and when he started ahead, you started ahead, too? A. I went down to look at the hold; the second mate was up there.

Q. Then you do not know, yourself, what was rung on the telegraph? A. We started full speed, I know, when I was up there, and we were going full speed when I came back up again.

Q. How far away was the "Newport" then? A. When we had the flags up she was about three miles ahead.

Q. Were you on the bridge when the flags were put up? A. I was down on the main deck when the second mate went up in the rigging with the flags.

Q. Did your ship head right for the "Newport", or did you parallel his course? A. We were just on the starboard bow.

Q. You were on about the same course as he was? A. Yes.

Q. Paralleling him? A. Yes, and then he turned.

Q. Then your courses were the same, and about three miles apart? A. Yes.

Q. Then he turned and went south? A. Yes.

Q. Then you turned and headed for San Luis Obispo? A. We headed in more for the land.

Q. That was a little northerly? A. Yes, a little north of Port Harford, headed right in for the beach. I think I took a bearing on Moro Rock. That is in the bay there. It is a big rock that looks like a haystack.

(Testimony of Charles S. Semsen.)

Q. How far apart were the two ships when you put your helm aport? A. Right close together, about a ship length.

Q. A ship length? A. Yes.

Q. You were a ship length apart when you blew your four blasts? A. I should say about 100 feet.

MR. DORR: Q. 100 feet when you put your helm over? A. Yes, about that.

Q. When you gave the command? A. Yes.

MR. MACKEY: Q. Did your helm go over immediately? A. It had to be hauled over by hand; we had no steam.

Q. Did you order it hard aport? A. Yes, I told him to put it hard aport.

Q. And this was a little bit after you had blown your four blasts? A. That was after we had blown the four blasts.

Q. Sometime after you blew the four blasts? A. Well, the vessels were about 100 feet apart.

Q. If you had put your helm hard a-starboard when you blew your four blasts, would you have cleared the "Newport"? A. No, sir.

Q. Why not? A. We would have been heading right into her just the same, but on a different degree.

Q. Wouldn't you have swung clear of her entirely? A. No, sir.

Q. If you had stopped your engines at the time you blew the four blasts, would you have cleared? A. Well, I don't know, I think not; I don't think we could have avoided it. If we had stopped her, I think there would have been a collision just the same if he had took his ordinary course.

Q. If you had slowed down when you blew the first four-blast signal, what would have happened? A. Well,

(Testimony of Charles S. Semsen.)

if the other man went where he ought to go, he would have gone right into us and we would have been blamed for everything.

Q. The ships were just about at right angles to each other when the collision occurred? A. Pretty near.

Q. They were just about at right angles? A. Yes, just about; he hit us right square amidships, head on.

MR. MACKEY: That is all.

REDIRECT EXAMINATION

MR. DORR: Q. How was your forecastle head painted? A. Our forecastle head is a gray color.

Q. Wasn't there some white trimming there, too? A. A little bit on the outside.

Q. And some white trimming on the after part of the poop? A. Around the forecastle head and down a little way is white.

Q. In regard to the painting on your ship, Captain, under the weather conditions as they existed on that morning how far away could the "Svea" have been seen? A. I should say ten miles, anyway.

Q. There was nothing about her painting that made her difficult to see? A. No, sir. We saw the steam schooner "Lindauer" in the evening, she came up to us at about half past five, and we saw her for about two hours before she came to us. We were watching her, trying to draw her attention to come along. We had our flag in the fore-rigging; I took them from the main rigging and shifted them up forward, so that she could see them, and so it would draw her attention to us.

Q. You made these entries in the log-book, did you? A. Yes, they are mostly all mine.

MR. DORR: The following are the entries in the log-book from 8 a. m. on November 29, 1922; it is stipulated that they may be copied into the deposition at this point:

PILOT HOUSE LOG BOOK

Steamship SVEA Voyage 361

Wednesday Date Nov. 29th 1922. Sailing from VENTURA to ABERDEEN

Time By Clock Hrs.	Min.	Name of Headland or Place	Pilot House Compass	Log Reading	Wind	Weather	Barom-eter		Ther-mom-eter	Re-Marks
8	00	Log Noted	NW	95½	NW	Cloudy	Mod	wsty	Swall	
9	15	Cc	NWxN½N	103½	Light NW	Clear	"	"	"	
9	53	(Coliginan) with " Steamer Newport. She left as (collision) Heading in for Sant Luis, all off are Pums going to cipe the water out								
10	45	A. M. Manned hand pump, water gaining								
11	40	" Engins stopt heading for the beatch fires out.								
11	45	" Let go Port anchor at 19 ftm. of water about 1 mile to Westward of Becho Rk.								
3	15	Pute No. 2 Boat out, weath 2nd Mate and 3 Seaman, went for assistance ashore, at 5:30 P. M. Steam Schooner G. C. Lindauer, came along and Stoad by us. the crew wash transferrd over to Steamer Lindauer for Safty. Except Captain Chife Engener and myselw Semsen 7.00 P. M. 2nd Mate Mr. Anderson. Returned weath 3 gaslin Lunchis to assista and Tow us to Port St Luis.								

(Testimony of Charles S. Semsen.)

RECROSS EXAMINATION

MR. MACKEY: Q. What direction was the wind, if any? A. A northwesterly wind.

Q. As you made for the beach, the wind was pretty well with you, was it not? A. Yes, we were heading in about east northeast, I guess; a little on the aft beam.

Q. There was hardly any wind at all? A. No; there was very little.

Q. The flags that you hoisted hung pretty well down, didn't they? A. Oh, yes, sometimes they were hanging down and sometimes they blowed out.

Q. It would be pretty difficult to see them at a distance of three miles, wouldn't it? A. When they blowed out you could easily see them at three miles.

Q. But if you didn't happen to catch them just as they blew out you would not know what it was, would you? A. Sometimes you can't make them out unless you are familiar with them.

Q. Most of the time you were going in there with the wind coming with you and the flags would hang down dead, wouldn't they? A. Sometimes they were.

Q. When you saw them they were hanging just about right straight down, weren't they? A. I seen them a couple of times—a few times—hanging down, and other times I saw them blowing out.

Q. They would just flap out and then hang down again? A. They had a tendency to do that; they were not all the time hanging down.

FURTHER REDIRECT EXAMINATION

MR. DORR: Q. At the time you put your helm over, or, rather, at the time you gave the command to

(Testimony of Karl Rohberg.)

the helmsman to put the wheel over, was there any possibility, then, of avoiding the collision? A. No, sir.

Q. I think you have already stated you did that to ease the blow? A. Yes, so as to get a slanting blow and not head on so much.

FURTHER RECROSS EXAMINATION

MR. MACKEY: Q. Does the "Svea" have a right turning screw? A. I don't know.

Q. When she backs, does she back to port or to starboard? A. She backs to port, generally.

Q. If you had backed your engine at the same time you put your helm over, it would help to swing her, would it not? A. I suppose it would.

Q. And it would also help to take the headway off her? A. I didn't have any right to do that—the master was there.

MR. DORR: Q. You are about to go to sea, are you? A. Yes, I am going to sail on the 26th of this month.

———x———

KARL ROHBERG,

Called for the Libelant; Sworn.

MR. DORR: Q. You are a licensed master, are you, Captain? A. Yes, sir.

Q. How long have you held your license? A. You mean as master?

Q. Yes. A. About nine years.

Q. You were master of the steamship "Svea" on November 29, 1922? A. Yes, sir.

Q. How long had you been on the "Svea" at that time? A. About 3½ years.

(Testimony of Karl Rohberg.)

Q. How large a vessel was the "Svea"? A. 370 net, 640 gross tons.

Q. What was her length? A. 174 feet, I think.

Q. And her beam? A. 38 and a fraction.

Q. A Steam schooner? A. Yes, sir.

Q. Engaged in the lumber-carrying trade? A. Yes, sir.

Q. Between what ports? A. Between Grays Harbor and Southern California, and San Francisco.

Q. What speed did she make? A. About 8, nothing over 8.

Q. That was about the best she would do, about 8 knots? A. Under the weather conditions of that day.

Q. You mean under the weather conditions of November 29th? A. Yes, sir.

Q. How was the "Svea" constructed below decks in regard to her hold, did she have more than one hold? A. One hold.

Q. How many hatches? A. One hatch.

Q. Where were you bound on November 29th? A. To San Francisco.

Q. From where? A. From Ventura, California.

Q. Light? A. Light.

Q. Where were you between 8 and 9 o'clock on the morning of November 29, say in the neighborhood of 9 o'clock? A. A little to the northward of Port San Luis.

Q. That is in San Luis Obispo County, isn't it? A. Yes, sir.

Q. How far off-shore were you? A. About twelve miles; that is a guess.

(Testimony of Karl Rohberg.)

Q. That is your estimate? A. Yes.

Q. Who was on watch after 8 o'clock on that morning? A. The chief mate.

Q. Charles Semsen? A. Yes.

Q. Do you know what time it was when you passed Point Conception? A. It was sometime in the morning watch, between 12 and 4, I think; I am not sure.

Q. Were you on deck? A. Yes, sir.

Q. Where did you head from Point Conception? A. I set the course off Point Arguello.

Q. That is to the northward of Point Conception? A. Yes.

Q. How far? A. About 13 miles.

Q. How far off did you pass Point Arguello, if you know? A. I told the mate to pass about a mile and a half or two miles off, nothing closer than that.

Q. You did not remain on deck? A. No. I remained on deck until I sighted Point Arguello Light.

Q. What course did you steer after passing Point Arguello? A. I told the mate to steer northwest.

Q. Is that magnetic? A. Practically so—pilot house compass, but there was no deviation to amount to anything.

Q. Where would that course—northwest—take you from a mile and a half off Arguello? A. It would not take us quite to Point Sur, but almost. Point Sur is here, and Arguello is here; northwest would bring us a little close, I would have to take out a little before I got to Point Sur.

Q. It would take you a little inside of Point Sur? A. Yes.

(Testimony of Karl Rohberg.)

Q. How long a run was that? A. 122 miles.

Q. How long did you continue on that northwest course? A. Until 9:15 a. m.

Q. On November 29th? A. On November 29th.

Q. Did you change the course then? A. At 9:15.

Q. What did you change to? A. Northwest by north half north.

Q. Also magnetic? A. Yes, sir.

Q. What was your purpose in changing the course? A. I came on deck about 8:49, and I was sizing up the weather conditions; there was a little head swell and a little northwest wind.

Q. How was the weather otherwise? A. Clear.

Q. The sun shining? A. The sun shining, nice and clear.

Q. How far could you see? A. I could see the land about 12 miles off, 12 or 15 miles. You could see further than that.

Q. Was there any haze or fog of any kind? A. No, sir.

Q. Go on and state why you changed the course? A. I observed the weather conditions, and I thought that by going in on the land—we were making about 7½ miles per hour, and I thought that by getting under the land and making for Piedras Blancas I could make a little better time.

Q. And you changed, as you stated, to northwest by north, half north? A. Yes.

Q. Were you on the bridge when the course was changed? A. Yes, I changed the course.

Q. You changed the course? A. Yes, sir.

(Testimony of Karl Rohberg.)

Q. How long did you hold that course? A. Until a few seconds previous to the collision.

Q. By the "collision", you are referring to the collision of the steamer "Newport," are you? A. Yes.

Q. What time did that occur? A. 9:53.

Q. A. M.? A. Yes.

Q. That was about 38 minutes after you changed your course? A. Yes.

Q. When did you first sight the "Newport"? A. About 9:20 a. m., about five minutes after changing the course.

Q. Did you sight her yourself at that time? A. Yes, sir.

Q. What was her bearing from your vessel? A. About three points on the port bow, 3 points or a little over.

Q. On your port bow? A. On our port bow.

Q. How far off was she at that time? A. Well, I should guess nothing less than eight miles.

Q. Was she hull down—could you see her hull? A. Yes.

Q. You could see her plainly, could you? A. I could see that she was a steamer; of course, I could not tell that it was the "Newport". I could see that she was a steamer.

Q. You could see her smoke? A. Yes, I could see her smoke, and see her masts; I could see she was a steamer.

Q. Was anyone else on the bridge at the time? A. No, sir.

(Testimony of Karl Rohberg.)

Q. Who was standing the watch? A. The mate was standing the watch, and I came up at 8:45 on the bridge, and then the mate went to look after the work on deck. Then he came up again a few minutes afterwards.

Q. He went below on deck for a few minutes? A. Yes, for a few minutes to look after the general work.

Q. And you relieved him on the bridge? A. Yes, sir, I relieved him on the bridge.

Q. And then you say he returned to the bridge? A. Yes, sir, he returned to the bridge.

Q. About what time? A. Say about half past nine, I guess, or probably a little bit sooner.

Q. After you sighted the "Newport", what course did you hold? A. Northwest by north, half north.

Q. The same course you had been steering? A. Yes, sir.

Q. What speed were you making? A. About 8 miles an hour.

Q. Did you make any change at all in your speed? A. No, sir. I didn't take the log. Maybe after 9:15, when I changed the course, we got a little more slant and probably we improved a little bit.

Q. You made no change in your engines? A. No, sir.

Q. You gave no command to your engine-room? A. No, sir. There was no change unless the vessel improved a little by going on a slant. That was the reason for my pulling in.

Q. But from 9:15 on you made no change at all? A. No, sir.

(Testimony of Karl Rohberg.)

Q. Just state what happened after that, and while you were on the bridge? A. About 9:30 or something like that, the mate came up on the bridge again.

Q. How far was the "Newport" away at that time? A. About six miles, anyway.

Q. What was her bearing at that time? A. About the same, about 3 points on my port bow, probably a little over three points; I did not take the exact bearing, but just looking at the angle, that was about how she bore.

Q. What happened when the mate came on the bridge? A. He took his glasses, and was looking at the steamer. I was on the bridge. The mate said, "What steamer can that be?" I said, "I don't know." Then the mate says, "I wonder where she is bound." I says, "I don't know." Then the mate said, "I guess it is one of the Admiral Line," or "the Pacific Mail Line"—I don't remember exactly what he said. Finally he said, "That is one of the Pacific Mail boats." He finally made it out. We were standing on the bridge at that time. Then, when we were about three miles apart, in my judgment, still the bearing did not change, and the mate passed the remark to me, "I wonder what he is going to do."

Q. Was he drawing in on you all the time? A. The same position, the same bearing. It didn't look very good. The mate says, "I wonder what he is going to do." I says, "I think he knows the rules of the road." We continued on our course, and at the same speed. Then a few minutes afterwards, when I think we were

(Testimony of Karl Rohberg.)

about two miles apart, or probably, a little over, I gave one blast of the whistle.

Q. What kind of a whistle did you have on the "Svea"? A. A steam whistle, a good whistle.

Q. How far could it be heard, under ordinary conditions? A. Well, it has been heard four or five miles. Under these conditions, it should have been heard about two miles and a half or three miles.

Q. Was there any answer from the "Newport" to your one blast? A. No, sir, I didn't hear the whistle. I should have heard it; I looked in that direction, and I didn't see no steam come out of his whistle.

Q. At that time she was in plain sight? A. Yes. Before I gave the one blast the mate said, "That's the 'Newport.'" He made her out with his glasses. I did not look through the glasses.

Q. He could read her name? A. Well, whether he could read the name, or not, I don't know, but he said, "That is the 'Newport.'"

Q. What did you do after that? A. Well, I should judge about a minute and a half or two minutes later I gave four blasts of my whistle.

Q. Were they long blasts, or short blasts? A. Short rapid blasts.

Q. How far apart were you then? A. Away over a mile—a mile, anyway.

Q. Did the "Newport" respond to that signal? A. No, sir.

Q. What did you do after that? A. I kept my course and speed.

(Testimony of Karl Rohberg.)

Q. What was the bearing of the "Newport" at that time? A. About three points on my port bow.

Q. On your port bow? A. Yes, sir.

Q. After you blew four blasts, were there any further signals made? A. I gave a second four blasts.

Q. How far away were you from the "Newport" when you gave the second four blasts? A. About three-eighths of a mile, I would judge about three-eighths of a mile—probably a little over.

Q. Did you hear any response from the "Newport"? A. No, sir.

Q. Did you see any steam from her whistle? A. No, sir.

Q. Then what did you do? A. I kept my course and speed.

Q. What did the mate do? A. He was standing alongside of me,—he didn't do nothing.

Q. He was on the bridge? A. Yes, we were on the bridge all the time, all this time.

Q. Where was your steering wheel located? A. Right below our feet.

Q. In a pilot house? A. Yes.

Q. You had a man at the wheel? A. Yes, sir.

Q. Where was your engine-room telegraph located? A. On the bridge.

Q. After the last signal that you have mentioned, what did your vessel do? A. Kept the course and speed.

Q. What did the "Newport" do? A. I don't know what she done.

Q. What did she do as far as you could see? A. Well, so far as I saw it looked like she was coming

(Testimony of Karl Rohberg.)

the same way, but I thought she would port her helm and come under my stern.

Q. Did she strike your vessel? A. Yes, sir.

Q. Where did she strike your vessel? A. Just about amidships.

Q. On which side? A. On the port side.

Q. Was any word passed to the wheel on your ship? A. Just before she struck, the mate sung out, "Hard a-port." Of course. I did not countermand that order. We were not very far apart, and there was going to be a collision, and I thought, "All right, let it go that way and she will strike more straight, instead of slanting aft, but of course we did not swing any—not to amount to anything.

Q. Was there any chance at that time to avoid a collision? A. No, not on my side.

Q. What damage, if any, was done to the side of your ship when the "Newport" struck her? Just describe what happened there. A. It broke the rail on top; the guard rail was bruised up; I don't know how far it was, and I don't know how badly it was, but it cut the planks below the water line.

Q. Also above the water line? A. Also above the water line, yes, sir.

Q. Did your ship take any water? A. Well, at the time right away we were not sure of it, but we started all the pumps; about five minutes afterwards, when we were clear of the "Newport", somebody on the "Newport" asked me to stand by them. I started to follow them up. In the meantime we tried to find out how much water she was making.

(Testimony of Karl Rohberg.)

Q. That who was making? A. The "Svea." The chief said, "She is gaining." Then we manned the hand pumps to help along to try to keep her afloat and make Port San Luis.

Q. Did you have the pumps working? A. All the pumps in the engine-room, the siphon, the sanitary pumps, and everything that we had, everything that was on the bilges. Then she was gaining, and so we manned the hand pumps. Then I told the chief sngineer to try and pump all the oil from the port side over to the starboard. I told the cook to pump out the port water tank, if he could, in the galley, with his hand pump. I sent a man tc pump water into the starboard empty oil tank so as to make the starboard list in the water.

Q. What did the "Newport" do immediately after the collision? A. She got clear of us.

Q. How did she get clear of you? A. I don't know if she backed away, or what she done, but she got away from our side a little. Then, with the sea, I guess we were swinging a little, and with the sea she was swinging, and she just touched us a little with her stern, just a bruise; it can be seen on the vessel yet. One man in uniform asked me to stand by her.

Q. Where was he? A. He came up on the forecastle head buttoning his uniform coat, and he said, "Stand by us."

Q. Did you exchange any conversation with anybody on the "Newport"? A. The first word I said to them was: "You are fine navigators." He says to me, "Stand by us." I said, "All right." I put my hand up and said "All right." Then I looked at the "Newport's"

(Testimony of Karl Rohberg.)

bow and I passed the remark to the mate, "Her bow is badly smashed, she probably will sink."

Q. Then what did the "Newport" do after that? A. She sheered off and was heading for Port San Luis, and we followed her up.

Q. Did you keep close to her? A. By the time I got around I started half speed, or slow speed, I don't remember what bells I gave, but I started to follow her up. Afterwards, I gave full speed, trying to catch up to her, to find out how she was, but she was getting farther away from us all the time, I couldn't catch her.

Q. Did you make any signals to her? A. I blew four blasts of the whistle. Then, two or three minutes afterwards, I blew one blast. Two or three minutes afterwards I blew another blast. Then I put up the distress signal, consisting of the "N" and "C".

Q. What kind of a signal is that? A. A distress signal, with the letters "NC".

Q. Flags? A. Yes.

Q. International code? A. International code.

Q. Where did you hoist your distress signal? A. On the forward rigging.

Q. How far could that be seen? A. A couple of miles, anyway.

Q. Captain, in the weather conditions existing at the time of the collision and immediately prior thereto, how far was it possible to have seen the "Svea"? A. Seven or eight miles; probably more than that.

Q. What did you do from then on? You say you were heading toward the shore. A. I was close enough

(Testimony of Karl Rohberg.)

inshore. When I could not catch the "Newport" I tried to save distance. I followed the shore line, trying to make San Luis.

Q. Did you work your engines? A. Yes, we were working them until 11:40.

Q. Why did you stop working her engines? A. Because the fires were out; you couldn't keep steam up when the fires were out.

Q. What put the fires out? A. The water.

Q. The water coming in through the hole on the ship's side? A. Yes, sir.

Q. What did you do after the fires were out? A. I headed right in shore, and used the lead while she had headway. Of course, I could have beached her before, but I didn't want to beach her. I got her into 19 fathoms of water. She had headway after we stopped the engines. At 11:40, in 19 fathoms of water, I dropped the port anchor.

Q. How long did you stay by the ship? A. Until 11:15 that night.

Q. What was her condition when you left her? A. She was on her side, lying on her side.

D. Did you return to her after that? A. I returned the next morning.

Q. What was her condition then? A. She was bottom up.

Q. Was there anything more than could have been done to have kept her afloat that was not done? A. Not to my knowledge, or, I don't think to the knowledge of anybody else on board that ship. The chief mate suggested after anchoring to put a canvas on the outside;

(Testimony of Karl Rohberg.)

we had a brand new tarpaulin on top of the tanks forward, and we got that out and got lines around the bow, with a chain, down abreast of that hole, two lines; then we pulled the lines around and tied the tarpaulin and pulled it over the side, getting it abreast of the hole to be the canvas to such into the hole, and it probably would have stopped it, but on account of the sea it would not suck in.

Q. Did the schooner "Oregon" afterwards come alongside the "Svea" where she was anchored? A. Yes; she was sent there afterwards.

Q. When did the "Oregon" arrive? A. December 1st, I think it was.

Q. What did the "Oregon" do? A. She dropped her anchor and used a grab hook to pick up the "Svea" anchor chain. She maneuvered around. At first she couldn't get it; then she tried to pick up her anchor with her anchor. She got the anchor and she had a hard job to clear herself. The captain of the "Oregon" anchored again. We ran the grab hook out with a gasoline launch but we missed it, we tried it a second time and missed it, but the third time we grabbed it and got the chains up and then got the booms up; we got a chain up by the rail and kept on taking a couple of fathoms at a time until we got the anchor on board the "Oregon." Then we cut the anchor chain. Then we shacked on a 10-inch hawser from the "Shawnee", and we cut the stoppers, and the "Shawnee" got hold of the tow and proceeded to San Francisco.

Q. And the "Oregon" also accompanied the "Svea" to San Francisco? A. Yes, up to Pigeon Point.

(Testimony of Karl Rohberg.)

Q. Did you obtain the services of any gasoline launches from San Luis Obispo? A. Yes.

Q. How many launches did you have out there? A. We had three launches out there the first night to see if I could tow her into Port San Luis before she got filled up. We could do nothing ourselves, because the fire was out.

Q. Did you have some launches after that? A. I had a launch the next day to go out and see how she looked. Then we had the launch while we were picking up the anchor chain, and we had the grab hooks, as they call them.

Q. What became of your crew? A. I sent the second mate and three men in the boat for assistance to Port San Luis.

Q. That was in one of your lifeboats? A. Yes.

Q. What became of the rest of the crew? A. I sent ten men up on the steamer "Lindauer."

Q. When did the steamer "Lindauer" arrive on the scene? A. A little after five o'clock.

Q. And they took your crew to San Francisco? A. I asked the captain to take them up and he said all right.

Q. What became of the "Svea" after she was brought to San Francisco? A. After the "Shawnee" got in, the Red Stack tug went out the next morning to meet her and towed her in between Piers 41 and 43.

Q. And she remained there for several days? A. She remained there for several days.

Q. Was she still bottom-up at that time? A. Yes. She was on the broadside while they were pulling her around the corner of 41.

(Testimony of Karl Rohberg.)

Q. And she was subsequently righted. A. She was subsequently righted and put in the dry-dock at the Moore Shipbuilding Works, and, finally, she was put in the dry-dock at Barnes & Tibbits Shipyard, and then my services were not further required.

Q. What was the condition of the "Svea" as to seaworthiness prior to the collision? A. No. 1, in the best of condition.

Q. In good, seaworthy condition? A. In the best of condition.

Q. How big a crew did you carry, Captain? A. Seventeen, at the time of the collision. We carried 19 sometimes, but I was two men short. I had a full crew as required by law.

Q. You had a full crew, as required by law? A. Yes, sir.

Q. Are you about to go to sea? A. Yes, sir.

CROSS EXAMINATION

MR. MACKEY: Q. Captain, in the log-book, here, I cannot make out one part of it. It says: "9:53 Collision with"— and then on the same line are ditto marks under the course NWx½N; then, reading along the same line on the opposite page it says: "Steamer Newport." Does that mean collision with steamer "Newport"—reading right over the line, here? A. Yes.

Q. Then, on the next line, under the line which says "9:53", it says, "Heading in for San Luis, all off"— what is the next word? A. "All pumps are going to keep the water off."

Q. The word after "all" is "off"? A. Yes.

Q. And the next word on the opposite page is "pumps"? A. Yes.

(Testimony of Karl Rohberg.)

Q. "All pumps going to keep the water off"? A. Yes.

Q. You have the word "keep" spelled "cipe". A. Yes.

MR. DORR: Q. The mate wrote that, didn't he? A. Yes. He is poor at spelling, and I am poor at spelling, too. My kid, nine and a half years old, is a better speller than I am.

MR. MACKEY: Q. How was your crew made up, how many deck officers did you have? A. Two.

Q. Two besides yourself? A. Yes.

Q. How many engineer officers? A. Three.

Q. The chief, the first assistant, and the second assistant? A. Yes.

Q. That makes six thus far. A. Yes.

Q. How many in the engine-room force? A. Three firemen.

Q. That makes nine. Who were the others? A. The cook and the cabin man.

Q. That makes 11. A. And six able seamen.

Q. That makes 17. A. I used to carry six seamen and two winch drivers, but one winch driver left and one seaman left, and then one winch driver went as a seaman. I was not required to carry winch drivers.

Q. When was the last annual inspection prior to the time of the collision? A. You can find the date in Wilson's office. It was not very long before that. It was not more than a couple of months before that. I should say about two months previous to that.

Q. Had you been in dry-dock at any time between the last annual inspection and the time of the collision? A. No.

(Testimony of Karl Rohberg.)

Q. You had not been overhauled at all between those two times? A. No, not between the inspection and this time, but we were overhauled shortly before that, we were in dry-dock shortly before inspection. It was in June or July that we were in drydock. I guess it was in July.

Q. Did you go into dry-dock on your annual inspection? A. No, not if we have been there previously before that. We go in about once a year, or once in about fourteen months, or something like that.

Q. You ordinarily make a little water, don't you, in the bilges? A. Even when we are loaded, there is nothing on except the line pump. It ordinarily makes a little bit. The line pump keeps that dry. We never had to put a donkey on to keep it dry.

Q. The only place you were making water after the collision was through the hole that had been opened up? A So far as my knowledge goes; I don't think it was anywhere else.

Q. How far above sea water was the guard of the "Svea" at the point where the collision took place? You have about a 12-inch guard running around the side of the ship, haven't you? A. Yes, sir.

Q. How far from the guard to the sea water was it at the point where the "Newport" came in contact with you? A. About four or five planks below, I should think, if you were in smooth water. In a swell, the water comes right up to the guard. In smooth water I think it would be about four or five planks. I would not be dead sure how many.

(Testimony of Karl Rohberg.)

Q. What is the maximum speed the "Svea" is capable of in smooth water? A. When it is smooth and she is empty, she will make about 9 or 9½.

Q. When she is empty she is pretty well down in the stern, isn't she? A. She is about 14 feet aft, and about 7 feet forward—7 feet 6 inches.

Q. The engine, and all the superstructure, is aft? A. Yes, the engines are aft. Forward we have the two oil tanks. Those were empty at the time.

Q. Those were empty at the time of the collision? A. Yes, except for a few barrels.

Q. Under those conditions, you set down pretty well on the stern? A. Almost, not quite. The "Oregon" and the "Idaho" draw 19 feet aft, and they draw 5 feet forward. They stand right like this. In any wind, at all, you can not handle them, hardly, because the bow is right up. We are a little bit more on this angle.

Q. You find some difficulty in traveling light, don't you, if there is any wind? A. Oh, no.

Q. She will go from one side to the other? A. Oh, no.

Q. You are able to keep the course all the time, are you? A. Yes, sir.

Q. But it takes quite a little bit of helm, doesn't it? A. Not in those conditions.

Q. No, but I mean in much of a wind. A. Yes.

Q. As she was in that condition—light and setting down by the stern—she will turn pretty rapidly, won't she? A. She would turn fairly good, I should think.

Q. What would be the circle in which you would turn, do you suppose, under those circumstances? A. I

(Testimony of Karl Rohberg.)

could not tell you the circle, because I never tried that. If I have to make a landing like that, I fill, and back, and fill again. I never was going full speed and made a round turn on her, I never tried it.

Q. Could you estimate it, going full speed ahead and putting her helm hard over? She would turn in 300 or 400 feet, wouldn't she? A. No, not quite that.

Q. She would come pretty close to it, wouldn't she? A. No, not quite that.

Q. How much? Do you think she would turn in 600 feet? A. How many feet to a mile—let me see.

Q. Let me ask you this question. Do you know the channel down there in San Pedro, the main channel? A. Yes.

Q. That is about 500 feet, isn't it? A. Yes.

Q. Do you think you could turn around in that? A. I could turn around by filling and backing.

Q. I mean in going full ahead under a hard helm. A. No.

Q. How much more space do you think you would have to have? A. I don't think I could make it in twice that space.

Q. Say your were lying alongside of a dock down there, and headed downstream, and you went ahead on your engines and put your helm hard over, don't you think you would come pretty close to turning her around in that distance—light, and setting down by the stern? A. No, sir, not half.

Q. She would turn around, then, in about 1000 feet? A. She might, and she might not.

Q. If you were going eight knots, and put your helm hard aport and reversed your engines full speed

(Testimony of Karl Rohberg.)

astern, what do you think would be your turning circle? A. I only could make a guess at that.

Q. All right, make a guess. A. In a quarter of a mile, probably.

Q. You don't think she would do it in less than that? A. I don't think so.

Q. Going eight knots, and then putting your engines full astern, how far do you think you would travel before you came to a stop? A. If we were empty, as in this case, it probably would have been a quarter of a mile, or a little bit less, probably.

Q. Before the local inspectors, didn't you say it would be 200 or 250 feet? A. No. The mate said that, but I would like to see him take off the headway in that distance. I never tried that, so I am only guessing. Wherever I make a wharf, I go half speed, first, and then I slow down, and then I back, and then come up, and even then I come sometimes too hard against the wharf. In this particular condition, it might have been less than a quarter of a mile. The mate said 250 feet. I remember that answer, because I have laughed about that answer with other steam schooner captains.

Q. You saw the "Newport" about eight miles away, and from that time on until the time of the collision her bearing stayed the same? A. Yes.

Q. When did you first have a doubt as to whether she was going to keep out of your way? You expected her to get out of your way, according to the rules of the road, did you? A. Yes, sir.

Q. When did you first have a doubt that she was going to do that? A. Just when we were about 100

(Testimony of Karl Rohberg.)

feet apart, I guess. We were almost ready to have a collision, and at the same time the mate sung out"Hard aport."

Q. When you blew the second distress signal, did it not occur to you that there was something wrong on the "Newport"? A. No, I don't think so.

Q. You didn't see anybody on the bridge, did you? A. I didn't see anybody, but I didn't know whether there was anybody there, or there was not anybody there.

Q. You couldn't see anybody there? A. No.

Q. Didn't it occur to you that there was something wrong on her then? A. No, it did not occur to me that way.

Q. What did you blow your distress signal for? A. To call his attention to me. It did not look good to me then, the way things looked.

Q. You didn't think then he was going to keep clear of you? A. No, but I just called his attention to it to keep clear of me.

Q. And you knew if he kept on you would come to-together? A. No, I didn't know that, but it looked doubtful to me.

Q. When the bearing remains the same, and there is no change in the course of either vessel, and no change in the speed, you know they are going to come together, don't you? A. As I said before, I never took exact bearings, it was just a guess at that bearing.

Q. When she goes along from eight miles to within three-eighths of a mile or half a mile, and the bearing does not change substantially, you can get it pretty

(Testimony of Karl Rohberg.)

close at that time, can't you? You know by that time the bearing is staying the same, in that distance, don't you? A. Well, just about, yes.

Q. You don't have to do any sighting to know that, do you? A. But there was plenty of time for him to clear me at that time.

Q. But you didn't see any activity on the bridge, at all, did you? A. Well, I didn't see it, no.

Q. And your idea in blowing the danger signal was to try and get somebody to do something over there? A. Yes, sir.

Q. And you were not getting any signals from him? A. No.

Q. It looked rather as if nothing was going to happen on there, didn't it? That was your impression, wasn't it, although you expected him to do something? It was your impression that there was something wrong over there and they ought to have some notice that you were coming along side? A. It was not exactly my impression that there was going to happen something.

Q. What was your impression? What was the reason you blew the danger signal? A. Well, they didn't answer my passing signal.

Q. They didn't answer your passing signal in the first instance? A. No.

Q. They didn't answer your first distress signal? A. No.

Q. They didn't answer your second distress signal? A. No.

Q. And you didn't see anybody on the bridge, and there was not any change in course; now, didn't all that

(Testimony of Karl Rohberg.)

convey to you the idea that there was something wrong and that you ought to blow a danger signal and try and get them to do something more than they were doing? A. Yes.

Q. Isn't that the fact? A. Yes, I tried to call their attention.

Q. Now, honestly, captain, as you went along there and you didn't get any result from anything that you did, didn't it rather strike you that there was something wrong there, that they ought to have their attention called to it? A. That is why I blew those whistles, to call their attention to it.

Q. You were afraid that they were not on the job, and they were not going to keep out of the way, as they were supposed to do: Isn't that correct? A. No, I was not afraid of that. I thought they would keep away, but they didn't pay any attention to me. I though they were going about their business and I could go about mine.

Q. Why did you blow anything at all? Why did you blow any danger signal? If you were just going to go about your business, it was their business to keep out of your way, wasn't it? A. Yes.

Q. And your business was to go along and hold your course and speed. You figured you were all right. You figured that there was not anything for you to do but to go ahead, didn't you? A. Yes, sir.

Q. And you didn't have to blow any signals if you didn't want to? A. No.

Q. And you figured that it was entirely up to him to keep out of your way? A. Yes, sir.

(Testimony of Karl Rohberg.)

Q. When it occurred to you to blow the danger signal the first time, wasn't that because you did not see any activity on the bridge of the "Newport", she did not seem to be doing anything to keep out of the way, and you wanted to notify her or call her attention to that situation? A. Yes.

Q. And when you blew the second danger signal, you thought the condition was much worse, didn't you? A. I thought the condition was the same.

Q. Well, you were coming closer together, then, weren't you? A. Well, there was plenty of time to clear us.

Q. But even then you figured that they had not indicated at all any change of action on the "Newport", and that they would have to do something or there would be a collision, because you were going to go ahead on your own course: That is correct, isn't it? A. Yes.

Q. I am just trying to get at what was going on in your mind at that time and why you blew those danger signals; you must have had a fear that they were not paying attention.

MR. DORR: Let him state it, and don't argue it with him, Mr. Mackey.

A. Well, I thought I would blow the danger signals for them to attend to their duties.

MR. MACKEY: Q. And they didn't seem to be doing it? A. Well, I didn't know whether they were doing it, or not, but it didn't look good to me. They might have slowed down at the same angle, you know; I didn't know what was going on on that vessel.

Q. But you could not see what was going on? A. No; I could not see the telegraph.

(Testimony of Karl Rohberg.)

Q. But it didn't look good to you at all? A. It didn't look good to me, but at the same time, after I blew the second four blasts there was plenty of time for them to act, and plenty of time for me to act if I was given some signals.

Q. And that was about between three-eighths and half a mile away? A. Yes.

Q. The two vessels were that much apart? A. Yes.

Q. You didn't give any more signals? A. No.

Q. And you went up to within about 100 feet of the "Newport" before the mate gave the order to port the helm? A. Yes.

And then at 9:53 the collision occurred, and at the same instant you put the engines full astern? A. I stopped my engines.

Q. You stopped your engines? A. I told the mate to stop.

Q. How far apart were the vessels when you realized that they were not going to do anything on the "Newport"? A. Well, about a shiplength.

Q. About one of their shiplengths, or yours. A. About one of their shiplengths.

Q. That is about 400 feet? A. No, not quite that.

Q. About 250 feet? A. I beg your pardon, that was my error, about 200 feet.

Q. About 200 feet? A. Yes, sir.

Q. It might have been 250? A. Well, I don't think so, no.

Q. If you had reversed your engines at that time, what would have happened? A. I would have rammed into the "Newport" amidships.

Q. If you had reversed your engines. A. Yes.

(Testimony of Karl Rohberg.)

Q. You would have rammed her amidships? A. In my judgment, I would have rammed her about amidships. I would probably have taken off that much headway. I would have struck her just about like this (indicating).

Q. If you had reversed your engines when you were, say, 200 feet away, and then put your helm hard a-starboard, what would have happened? A. I would have rammed the "Newport", in my judgment.

Q. How would your ship's head turn? A. If I put my helm hard a-starboard and the engines full astern, she would have about stood still. She had headway enough to swing, and the backing of the wheel would have counteracted the helm. She would just about head the same way.

Q. If you put the helm hard a-port, what would you have done? A. She would have swung probably to starboard, the ship's head would then have swung to starboard.

Q. And you would have swung her pretty well around, too, wouldn't you? A. It would swing a little, but not very much.

Q. In the 200 feet, with your engines full astern and your helm hard aport, how many points do you think your head would have swung? A. I could not answer that question.

Q. How far will the ship's head swing, going 8 knots, without any further action from the engines, and with your helm hard aport, how many points will you swing off? A. In 200 feet, about a point.

(Testimony of Karl Rohberg.)

Q. And if you reverse your engines she will swing more than that, won't she? A. Probably a little more, probably not; probably a little more than a point.

Q. If you had starboarded your helm when you blew your four-blast danger signal, you would have cleared the "Newport" entirely, wouldn't you? A. If she acted the way she did?

Q. If she kept her course. A. No, I could not.

Q. Didn't you say before the local inspectors that if you had starboarded your helm at the time you blew your four-blast signal you would have cleared? A. If she kept her course, I guess I could have cleared it.

Q. You would only have had to swing about a point to port in order to clear her: Is that correct? I mean if the action had been taken when you blew your four-blast signal, the second one? A. Well, if she kept the same course after I blew the four blasts I could have cleared her; I think I could.

Q. If you had reversed your engines at the time you blew your four-blast signal—

MR .DORR: Which four blasts do you refer to?

MR. MACKEY: The second four blasts.

MR. DORR: The second four blasts all through.

MR. MACKEY: Q. (Continuing) —there would have been no collision, would there? A. I should think I could propably have taken off the headway.

Q. Didn't you say down before the local inspectors that if you had reversed your engines at the time you blew your second four blast-signal that you could have avoided her?

MR. DORR: That is the same answer; he said he could have taken off the headway.

(Testimony of Karl Rohberg.)

A. I could have taken off the headway. That means I could have brought her to a stop.

MR. MACKEY: Before you got up to her? A. Before I got up to her.

Q. In other words, you would not have come together? A. No, we would not have come together.

Q. If you had slowed down at any time between the first four-blast-signal and the second one, say you had put her at half speed, don't you think you could have avoided the collision? You would have cut down speed enough, wouldn't you, so that she would pass by the point of intersection of your courses before you got there? A. No, not by slowing down alone; I would have hit the "Newport."

Q. What is your speed at half speed? A. About a mile less than full speed.

Q. About a mile less? A. That is about all.

Q. That puts her down to only seven knots? A. About that.

Q. How many turns do you make at half speed? A. I never counted them, I don't know, but I have been running half speed in the fog, and I know that she don't slow more than a mile. If I am going in the Bay half speed, it makes pretty nearly the same speed as at full speed.

Q. If you put her at slow speed, what do you get by way of knots? A. On slow speed we would probably get about two miles an hour.

Q. The only change of speed you have is full speed 8 knots, half speed 7 knots, and slow speed 2 knots? A. About that. I have been after them all the time

(Testimony of Karl Rohberg.)

to give me slow—when I give "Slow"—to go dead slow. When I make a landing that is the way I want it, dead slow. That is the understanding I have with my engineers.

Q. At the time the vessels came together, they were just about at a right angle, were they not? A. Just about at a right angle.

Q. After the collision, after the vessels had just separated so that they were clear of each other, somebody on the "Newport" asked you to stand by? A. Yes.

Q. And then they headed for the beach? A. Yes.

Q. And you swung around and headed on a parallel course to theirs, did you—approximately? A. Yes.

Q. You first went slow ahead? A. Well, I don't remember what bells I gave, exactly.

Q. Why didn't you give full speed ahead right off the bat—right away? A. Well, I didn't think the "Newport" was going full speed, I thought it was all right until I turned around.

Q. How far apart were you when you started toward the beach, paralleling her? A. I could not be sure of that.

Q. Your courses were about two or three miles apart, weren't they? A. Our courses?

Q. Yes; he was headed for the beach ahead of you, wasn't he? A. Yes.

Q. And you were a little bit north of him, also headed for the beach, on a course parallel to him? A. I was headed for him. When I came around I tried to head for him.

MR. DORR: Q. In other words, you were astern of him? A. Yes, I was astern of him. This was the

(Testimony of Karl Rohberg.)

"Newport"; after she got clear she started to head this way toward the beach, and after she got around our quarter she started to go for the beach. By the time I turned around, I went right for her.

MR. MACKEY: Q. And at that time your idea was to follow her up, was it? A. Yes, because she asked me to stand by. I wanted to find out how she was.

Q. Did she look pretty badly damaged? A. Her stem looked pretty badly damaged.

Q. She looked as though she might sink? A. As if she might sink, yes.

Q. At that time you did not consider your condition was as bad as hers? A. I did not, from the bridge, but after she got away I went down to the deck and sized things up, and in the meantime I found out that we were worse off than she was.

Q. How far apart were you when you put up your flags, your distress flags? A. I guess about a mile and a half.

Q. Do you think it might have been more than that? A. Hardly any more.

Q. How far away from the beach were you then? A. About nine or ten miles.

Q. You proceeded in, then, between two and three miles? A. We kept heading in for the beach.

Q. You had proceeded in from the time of the collision about two or three miles before you put up your distress flags; the collision occurred about 12 miles off the beach, didn't it? A. Yes, but that is a guess.

Q. And your other answer is a guess, too, isn't it, that you were about nine miles from the beach before you put the flags up? A. Yes.

(Testimony of Karl Rohberg.)

Q. So you must have gone in about two or three miles? A. Yes.

Q. The wind was off your stern, wasn't it; you were running with what wind there was? A. Well, I don't remember just exactly the course we steered. I watched the "Newport." She started getting ahead of us and I could not catch her. Then I blew four blasts; then I blew one blast; then another one blast.

Q. How far apart were you when you blew your first blast? A. About a mile and a quarter, or something like that.

Q. How far apart were you when you blew your first one-blast signal? A. Well, that all happened within a quarter of a mile.

Q. All those signals happened within a quarter of a mile? A. Yes, from first to last. I blew four when I found that we were in danger, and then another one, and then another one. There was only a couple of minutes between. We were going fullspeed, and she was going full speed, I guess.

Q. And then you put up your flags? A. Yes. When she paid no attention to the signals, I put up the flags. The second mate put them up.

Q. There was not very much wind, was there? A. There was a northwest wind.

Q. The flags hung down; the flags were not flying out free, were they? A. Well, not very free, but there was enough wind to keep them out.

Q. Do you think enough to keep them out flapping? A. Well, not exactly.

(Testimony of Karl Rohberg.)

Q. Do you think they would tend forward or aft? A. Well, a little more forward. We had the wind in the starboard quarter, like.

Q. In the starboard quarter? A. Yes.

Q. Then they would tend off your port bow? A. Yes.

Q. A good bit of the time they would just be hanging down, wouldn't they? A. Oh, no, there was wind enough so that they were blowing out.

Q. Are you sure of that, Captain? A. Yes. First, they were in the main rigging; the mate suggested to the second mate to put them in the forward rigging, because they would show better. There was enough wind to keep them out.

Q. So you took them out of the main rigging? A. Yes, and put them in the fore-rigging.

Q. Who did that? A. The second mate.

Q. How far off the beach were you when you put them in the fore-rigging? A. Probably about a mile closer than when we blew the whistles; it did not take very long.

Q. How much water was there in your hold at the time you dropped your anchor? A. About four feet in the hatch, on top of the second, about four feet or four and a half feet.

Q. What do you mean by "on top of the skin?" My question is, how deep was the water in your hold? A. About four feet.

Q. Four feet of water in your hold? A. On the skin, yes.

(Testimony of Karl Rohberg.)

MR. DORR: Q. Above the floor, do you mean? A. Yes. First comes the ribs; there is planking outside; the planking inside is the skin.

Q. You mean underneath the floor of the hold. A. No.

Q. I mean there is some distance underneath the floor, between the floor and the skin of the ship? A. Yes.

Q. How much distance is that? A. I don't know how big the timbers are that are in there.

MR. MACKEY:

Q. And you had about four feet of water on top of the floor of the hold at the time you dropped your anchor? A. Yes, sir.

Q. How deep is your hold, from the main deck down to the floor? A. I don't know, but about ten or eleven feet—about.

Q. Why didn't you drop your starboard anchor instead of your port anchor? A. Because the cut was on the port side; by taking the port anchor I though it would have listed her over more to starboard, and it would keep the cut out of the water.

Q. Why did you think it would list her over to starboard? A. Anything you take off on the port side would list her over the other way. I was pumping the water out of there at the same time, trying to list her over to starboard.

Q. What is the weight of your anchor? A. The anchor weighs about a ton, and then the chain; I gave her all the chain, about 90 fathoms of chain; I don't know the weight of that.

(Testimony of Karl Rohberg.)

Q. Were you rolling in there to a swell as you lay at anchor? A. No. She turned around and laid her head to the wind and sea; there was a little shop coming along; she laid her head to the wind and sea.

Q. But you were pitching a bit? A. Pitching, yes.

Q. And whenever you would come up with the swell there would be a pull on your anchor chain, wouldn't there? A. Not much.

Q. There would be some, wouldn't there—there always is? A. We had all the chain out. By having all the chain out there is not very much pull on it.

Q. Whenever you rise to the pull, you have to lift all that chain, don't you? A. Yes, lift the chain.

Q. Then with a long scope of chain out, and your riding to the swells, and your rising up with the swell, there is a tendency to pull more chain out, isn't there? A. Yes, a little tendency.

Q. Considerable of a tendency? A. Yes. It depends on the swell and the wind, of course.

Q. If you have a heavy swell, she is going to pull more? A. Yes.

Q. You had a pretty heavy swell at this time, didn't you? A. Well, not very heavy.

Q. What do you mean by "not very heavy"? She would go down quite a bit, wouldn't she, and she would come up with a jerk? A. No, it was not heavy enough for that. It was not a very heavy swell. If it was a very heavy swell, it would not have been safe in small boats.

Q. You had no difficulty in launching your boats, did you? A. No.

(Testimony of Karl Rohberg.)

REDIRECT EXAMINATION

MR. DORR: Q. Did the fact that you paid out your port anchor in any way contribute to turning that vessel over? A. Well, I could not notice it, whether it did, or not. The mate asked which anchor, and I said, "You better pay out the port anchor, it might list over to starboard and keep the water out of the cut."

Q. It was your best judgment to use the port anchor? A. Yes.

Q. There have been some questions asked by counsel in regard to avoiding a collision by stopping after you blew your last four whistles; those answers that you made to those questions are based on the assumption, are they not, that the "Newport" would hold its course and speed? A. Yes, sir.

Q. Did you, in that situation, consider whether or not you should stop, or back, or whether you should hold your course and speed? A. I did consider it.

Q. And what did you decide? A. I decided to go ahead, that she is going to change.

Q. Why did you decide to go ahead? A. Because I had the right of way.

Q. And what did you think that the other man might do? A. That the other man might port his helm, or stop and back, or clear me; I did not consider which way, but I considered that he would clear me in some shape or other.

Q. What would have happened if you had slackened your speed, or stopped your engines, or reversed your engines in an effort to avoid a collision, and at the

(Testimony of Karl Rohberg.)

same time the "Newport" had ported its helm? A. There would have been a collision.

Q. And that is what the "Newport" was obliged to do under the law, wasn't it, either that or some other step to avoid the collision? A. Yes, sir.

RECROSS EXAMINATION

MR. MACKEY: Q. Your whole idea was that you were to hold your course and speed? A. I was considering about whether I should take action.

Q. When did you consider that? A. After the second four blasts.

Q. How long after, or was it at the same time? A. Probably half a minute after, just a little after blowing the second four blasts and sizing up the things.

Q. As a matter of fact, you were thinking about it at the time you were blowing your four-blast signals? A. No, after blowing it.

Q. How far apart were the vessels when you commenced to consider whether to stop, or to reverse, or to do something yourself? A. Over a quarter of a mile. I could only come to the conclusion that if I acted there would be some mistake, and so I came to the conclusion to keep my course and speed.

Q. You were going to go right through with your course and speed, regardless of what he did? A. I didn't know what he was going to do. I considered that if I acted, and if he acted, there would be a collision sure.

Q. When you began to figure on what you should do, you had some doubt as to what he was going to do,

you had some doubt as to whether he was going to keep out of your way? A. Yes.

MR. DORR: Q. It was only a doubt, though wasn't it, Captain? A. Only a doubt. There was a chance for him to go clear.

Q. You knew what his duty was, under the circumstances, didn't you? A. I knew what his duty was, yes.

UNITED STATES OF AMERICA,)
STATE AND NORTHERN DISTRICT OF)
CALIFORNIA,) ss.
CITY AND COUNTY OF SAN FRANCISCO.)

I certify that, in pursuance of stipulation of counsel, on Friday, December 22, 1922, before me, E. M. CLARK, a Notary Public in and for the City and County of San Francisco State of California, at the offices of Messrs. ANDROS & HENGSTLER, in the Kohl Building, in the City and County of San Francisco, State of California, personally appeared JOHN MC KEOWN, CHARLES S. SEMSEN and KARL ROHBERG, witnesses called on behalf of the Libelant in the cause entitled in the caption hereof; and F. W. DORR, ESQ. appearing as proctor for the Libelan*d,* and RUSSELL A. MACKEY, ESQ., representing Messrs. Mc CUTCHEN, OLNEY, WILLARD, MANNON & GREENE, appeared as proctor for the Respondents, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said

cause, deposed and said as appears by their depositions hereto annexed.

I further certify that the depositions were then and there taken down in shorthand notes by CHARLES R. GAGAN, and thereafter reduced to typewriting; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the depositions to the witnesses and the signing thereof were expressly waived.

And I do further certify that I have retained the said depositions in my possession for the purpose of mailing them with my own hands to the Clerk of the Southern Division of the United States District Court in and for the Southern District of California, the court for which the same were taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in said depositions and captioned named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto set my hand in my office aforesaid this 7th day of February, 1923.

E. M. CLARK (SEAL)
Notary Public
In and for the City and County of San Francisco, State of California.
My Commission Expires April 22, 1924.

Filed Feb. 9, 1923. Chas. N. Williams, Clerk, By L. J. Cordes, deputy clerk.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

Now comes Pacific Mail Steamship Company, a corporation, respondent, claimant and cross-libelant above named, and (J.) George McKinnon, appellants herein, and say that in the record, opinions, decisions and decrees in the above entitled cause there is manifest and material error and said appellants now make, file and present the following assignment of errors on which they rely, to-wit:

I.

That the District Court erred in rendering the final decree herein of the date the 10th day of March, 1926.

II.

That the District Court erred in rendering the interlocutory decree in the above entitled cause of date the 15th day of September, 1924.

III.

That the District Court erred in rendering its opinion in the above entitled cause of date the 10th day of September, 1924.

IV.

That the District Court erred in holding and deciding that the Steamship "Svea" was not in fault in respect to the collision involved in this cause.

V.

That the District Court erred in holding and deciding that the Steamship "Svea" first realized that the "Newport" was not going to do anything to avoid the collision when the ships were but two hundred feet apart.

VI.

That the District Court erred in holding and deciding that the Steamship "SVEA" could not do anything which would have prevented or avoided the collision with the "Newport" after she realized that the "Newport" was not going to keep out of her way.

VII.

That the District Court erred in holding and deciding that the Steamship "Svea" was justified in proceeding on her course and with unabated speed until she was within one hundred feet of the "Newport", and in not holding and deciding that the "Svea" should have taken steps to avoid the collision while there was yet time and opportunity for her to do so.

VIII.

That the District Court erred in not holding and deciding that at a time when there was still ample opportunity for the "Svea" to avoid the collision, her navigators had clear indications that the "Newport" was not going to keep out of the way.

IX.

That the District Court erred in not holding and deciding that the "Svea" was in fault for not taking steps to avoid the collision before it was too late to avoid the collision.

X.

That the court erred in not holding and deciding that as the Master of the "Svea" was always uncertain as to the activities of the "Newport" and of those in charge of her navigation, it was the plain duty of the

"Svea" to solve that uncertainty in favor of safety by taking timely steps to avoid the collision before plunging into a position where a collision would be the natural if not the necessary consequence.

XI.

That the court erred in not holding and deciding that the navigators of the "Svea" were in fault for stubbornly persisting with course and speed until it was too late to do anything to avoid the collision.

XII.

That the District Court erred in holding and deciding that the collision was due to sole fault of the Steamship "Newport" and her navigators.

XIII.

That the District Court erred in rendering its decree in the premises against respondent George McKinnon, Master of the "Newport" and in not dismissing the libel as to said respondent.

XIV.

That the court erred in not holding and deciding that the collision between the Steamships "Newport" and the "Svea" was the result of the mutual fault of said vessels.

XV.

That the Court erred in not directing a division of the damages according to the usual practice in cases of collision between vessels mutually at fault.

XVI.

That the District Court erred in holding and deciding:

(1) That the second danger signal of four blasts from the "Svea" was blown when the vessels

were within 200 feet of each other and in not holding that said signal was blown when the vessels were three-eighths to one-half mile apart;

(2) That the Master of the "Svea" had no sufficient indication that the "Newport" would fail in her duty until he had rightfully reached a point where he was in extremis;

(3) That if the "Svea" had stopped her engines or changed her course, as contended by the "Newport", the collision would nevertheless have occurred.

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Claimant, Respondents, Cross-Libelants and Appellants.

[Endorsed]: No. 1202 Civil. In the Southern Division of the United States District Court for the Northern District of California Third Division. In Admiralty. Henry Wilson, et al., libelants vs. SS "Newport," etc., et al, respondents. Pacific Mail SS Company, claimant, Pacific Mail SS. Company, cross-libelant, vs. Henry Wilson, et al., cross-respondents. Assignment of Errors. Service of the within assignment of errors and receipt of a copy is hereby admitted this 27th day of Apr., 1926 Andros, Hengstler & Dorr, Proctors for Libelants. Filed Apr. 28, 1926. Chas. N. Williams, clerk, by R S Zimmerman deputy clerk. McCutchen, Olney, Mannon & Greene, Balfour Building San Francisco, California.

[Title of Court and Cause.]

NOTICE OF APPEAL

To Libelants and Cross-Respondents above named, and to Messrs. Andros & Hengstler and F. W. Dorr, Esq., and Andros Hengstler & Dorr, their proctors:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE and you are hereby notified that PACIFIC MAIL STEAMSHIP COMPANY, a corporation, claimant of the above named Steamship "NEWPORT" and respondent herein, and respondent (J) GEORGE McKINNON, Master of said vessel, hereby appeal to the next United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment and final decree made and entered herein on the 10th day of March, 1926, and the whole thereof.

Dated: San Francisco, California, April 27th, 1926.

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Claimant, Respondents, Cross-Libelant and Appellants.

[Endorsed]: No. 1202 Civil. In the Southern Division of the United States District Court for the Southern District of California, In Admiralty. Henry Wilson, et al., libelants, v. S. S. "Newport" her engines, etc. J. McKinnon, Master of said vessel and Pacific Mail SS Company, a corporation, owner of said vessel, respondents. Pacific Mail S. S. Co. a corporation, claimant, Pacific Mail S. S. Co., a corporation cross-libelant, v. Henry Wilson et al, cross-respondents. Notice of Appeal. Service of the within Notice of Appeal and

receipt of a copy is hereby admitted this 27th day of April, 1926. Andros, Hengstler & Dorr, Proctors for libelant. Filed Apr. 28, 1926. Chas. N. Williams, Clerk by R S Zimmerman, deputy clerk. McCutchen, Olney, Mannon & Greene Balfour Building, San Francisco, California.

[Title of Court and Cause.]

STIPULATION RE RECORD ON APPEAL

IT IS HEREBY STIPULATED that the originals of all exhibits received in evidence at the trial of the above cause may be filed in the Circuit Court of Appeals and that copies of said exhibits may be omitted from the record on appeal of the above cause.

IT IS FURTHER STIPULATED that the testimony taken before the Honorable Francis Krull upon the reference to ascertain and report the damages suffered by libelants, the exhibits offered or received during the hearings upon such reference, and the Commissioner's Report of such damages may be omitted from the Record and Apostles on Appeal of the above cause.

Dated: San Francisco, California, March 15, 1926.

Andros, Hengstler & Dorr
Proctors for Libelants.

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Claimant and
Respondents.

It is so ordered, this May 1st 1926

McCormick
District Judge.

[Endorsed]: No 1202 Civil. In the Southern Division of the United States District Court for the Southern District of California. Henry Wilson et al., libelants, vs. SS "Newport" etc. et al, respondents. Pacific Mail SS Company, a corporation, claimant. Pacific Mail SS Company, a corporation, cross-libelant, vs. Henry Wilson, et al, cross-respondents. Stipulation re record on appeal. Filed May 1, 1926. Chas. N. Williams, Clerk, by L. J. Cordes, deputy Clerk. McCutchen, Olney, Mannon & Greene Balfour Building, San Francisco, California.

[Title of Court and Cause.]

STIPULATION RE PRINTING RECORD ON APPEAL

IT IS HEREBY STIPULATED AND AGREED by the parties hereto that in the printing of the record on the appeal of the above entitled cause all captions shall be omitted except the caption of the Libel, Stipulation re Amendment to Libel, Amended Libel, Answer to Libel and Cross-Libel and in the place of such omissions the words "Title of Court and Cause" shall be substituted; also that all verifications shall be omitted, substituting therefor the word "verified"; also that the

original exhibits need not be printed, but may be considered as a part of the record, even though not printed.

Dated: April 27th, 1926.

Andros, Hengstler & Dorr
Proctors for Libelants and Cross-Respondents.

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Claimant, Respondents Cross-Libelant and Appellants.

IT IS SO ORDERED:

McCormick
United States District Judge.

Dated Apr. 28th 1926.

[Endorsed]: No. 1202. Civil. In the Southern Division of the United States District Court for the Southern District of California. In Admiralty. Henry Wilson, et al., libelants, v. Steamship "Newport," et al., respondents. Pacific Mail Steamship Company, a corporation, claimant. Pacific Mail Steamship Company, a corporation, cross-libelant, v. Henry Wilson, et al., cross-respondents. Stipulation re printing record on appeal. Filed Apr. 28, 1926. Chas. N. Williams, clerk, by R S Zimmerman deputy clerk. McCutchen, Olney, Mannon & Greene. Balfour Building, San Francisco, California

[Title of Court and Cause.]

BOND FOR COSTS ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

That we, PACIFIC MAIL STEAMSHIP COMPANY, a corporation, as Principal, and HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation, as Surety, are held and firmly bound unto Henry Wilson, F. A. Wilson, W. T. Wilson, Lucy W. Kendall, A. Kendall, A. J. Patterson, Jas. Pennycock, O. Bertelsen, J. S. Hutchinson, E. C. Hutchinson, C. E. Allen, A. B. Johnson, Katie M. Johnson, Mariett Johnson, A. Hansen, Clara A. Buchholz, H. W. Jackson, L. Everding, Frank Graham, Margaret A. Wilson, Trustee, Carrie E. Wilson, J. H. Wilson, Margaret A. Wilson, Wm. C. Wilson, James Graham, B. P. Nelson, Karl Rohberg, Charles S. Semsen, James Hayes, C. H. Anderson, Harry Walton, W. Saaris, Gust Anderson, Gust Saarinen, Wm. B. Reilly, Louis Norloff, John McDonald, Wilson Bangay, Robert White, George Dolan, John Lewis, and Sett Strand, their heirs, executors, administrators or assigns, in the sum of Two Hundred Fifty (250) Dollars, to be paid to the aforesaid Henry Wilson, F. A. Wilson, W. T. Wilson, Lucy W. Kendall, A. Kendall, A. J. Patterson, Jas. Pennycock, O. Bertelsen, J. S. Hutchinson, E. C. Hutchinson, C. E. Allen, A. B. Johnson, Katie M. Johnson, Mariett Johnson, A. Hansen, Clara A. Buchholz, H. W. Jackson, L. Everding, Frank Graham, Margaret A. Wilson, Trustee, Carrie E. Wilson, J. H. Wilson, Margaret A. Wilson, Wm. C. Wilson, James Graham, B. P. Nelson, Karl Rohberg, Charles S. Semsen, James Hayes, C. H. Anderson, Harry Walton, W. Saaris, Gust Anderson, Gust Saarinen, Wm. B Reilly, Louis Norloff, John McDonald, Wilson Bangay, Robert White, George Dolan, John Lewis, and Sett Strand, their heirs, executors, administrators or as-

signs, for the payment of which, well and truly to be made, we and each of us, jointly and severally, bind ourselves, our successors and assigns, firmly by these presents.

Sealed with our seals and dated the 27th day of April, 1926.

WHEREAS, claimant and respondent PACIFIC MAIL STEAMSHIP COMPANY, a corporation, and respondent (J) GEORGE McKINNON, appellants, have appealed or are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of the United States District Court in and for the Southern Division of the Southern District of California made and entered on the 10th day of March, 1926, in that certain cause entitled Henry Wilson, et al., Libelants, versus the Steamship "Newport" et al., Respondents, No. 1202 Civil of the records of said court, and the whole of said decree:

NOW, THEREFORE, the condition of this obligation is such that if the above named appellants shall prosecute said appeal with effect and pay all costs which may be awarded against them, or either of them, as such appellants, if the appeal is not sustained, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

PACIFIC MAIL STEAMSHIP COMPANY

(SEAL) By A. W. Boldman

Its President

Principal

HARTFORD ACCIDENT AND INDEMNITY COMPANY

By Alfred W. Hillback (SEAL)

Its Attorney in Fact

Surety.

EXAMINED AND RECOMMENDED FOR APPROVAL AS PROVIDED IN RULE 28 this 27th day of April, 1926.

Andros, Hengstler & Dorr
Andros & Hengstler
F. W. Dorr
Proctors for Libelants and
Cross-Respondents.

THE FOREGOING BOND IS HEREBY ALLOWED AND APPROVED THIS 28th day of APRIL, 1926.

McCormick
District Judge.

STATE OF CALIFORNIA)
City and County of San Francisco) ss.

On this 27th day of April in the year one thousand nine hundred and twenty-six, before me, John McCallan a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared ALFRED W. HILLBACK, known to me to be the Attorney-in-Fact of the HARTFOFRD ACCIDENT AND INDEMNITY COMPANY, the Corporation described in and that executed the within instrument, and also known to me to be the person.... who executed it on behalf of the Corporation therein named, and ....he.... acknowledged to me that such Corporation executed the same.

(SEAL)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office, in the said City and County of San Francisco, the day and year in this certificate first above written.

John McCallan

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires April 12th 1929.

[Endorsed]: No. 1202 Civil In the Southern Division of the United States District Court for the Southern District of California .....Division In Admiralty Henry Wilson, et al., Libelants, vs. Steamship "Newport" her engines, etc., et al., Respondents. Pacific Mail Steamship Company, a corporation, Claimant. Pacific Mail Steamship Company, a corporation, Cross-Libelant, vs. Henry Wilson et al., Cross Respondents. Bond for Costs on Appeal. Filed Apr 28 1926 Chas. N. Williams, Clerk By R. S. Zimmerman Deputy Clerk. McCutchen, Olney, Mannon & Greene Proctors for Pac. Mail SS Co. Balfour Building San Francisco, California

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[Title of Court and Cause.]

PRAECIPE FOR APOSTLES ON APPEAL.

To the Clerk of the above entitled court:

Please prepare the record and apostles on appeal to be filed in this cause in the Office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit and include therein the following:

A—All those papers, documents and data required by Subdivision 1 of Sec. 1 of Rule IV of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

B—All the pleadings, together with the exhibits annexed thereto in the above cause, all opinions of the court on questions arising in said cause, the interlocutory and final decrees herein and other documents herein designated; said papers, we understand, being as follows:

1. Libel with annexed interrogatories.
2. Claim of Pacific Mail Steamship Co.
3. Stipulation re amendment to libel
4. Amended libel
5. Answer of claimant and respondents to amended libel, with annexed interrogatories.
6. Cross-libel of Pacific Mail Steamship Company
7. Answer to cross-libel and answers to interrogatories propounded in answer and cross-libel
8. Memorandum opinion dated September 10, 1924.
9. Interlocutory Decree.
10. Final decree.

C—Court minutes of proceedings and orders in the above cause.

D—All testimony, depositions and other proofs adduced in said cause, except the testimony given before the United States Commissioner upon the reference to ascertain and report damages.

E—The original exhibits introduced in evidence in said cause except the exhibits introduced on the hearing before the United States Commissioner on the reference to ascertain and report damages.

F—Notice of appeal.

G—Assignment of errors.

H—Stipulation re record on Appeal.

I—Stipulation re Printing of the record on appeal

J—This pracipe.

In the printing of the above, omit all captions except in the libel, stipulation re amendment to libel, amended libel, and cross-libel, substituting therefor "Title of court and cause" and omit all verifications, substituting therefor the word "verified."

Farnham P. Griffiths
McCutchen, Olney, Mannon & Greene
Proctors for Claimant, Respondents, Cross-Libellants and Appellants.

[Endorsed]: No. 1202 Civil. In the Southern Division of the United States District Court for the Northern District of California. In Admiralty. Henry Wilson et al., libelants, vs. SS "Newport" etc et al., respondents. Pacific Mail SS. Company, a corporation, claimant, Pacific Mail SS. Company, a corporation, cross-libelant, vs. Henry Wilson, et al. Cross-respondents. Praecipe for Apostles on appeal. Service of the within Praceipe for Apostles on Appeal and receipt of a copy is hereby admitted this 27th day of April, 1926. Andros, Hengstler & Dorr Proctors for libelants. Filed Apr. 28, 1926. Chas. N. Williams, Clerk, by R S Zimmerman, deputy clerk. McCutchen, Olney, Mannon & Greene, Balfour Building San Francisco, California

(Title of Court and Cause).

CLERK'S CERTIFICATE.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing volume containing 230 pages numbered from 1 to 230 inclusive, to be the apostles on appeal in the above-entitled cause, as printed by the appellant, and presented to me for comparison and certification and that the same has been compared and corrected by me and contains a full, true and correct transcript of the records and proceedings in the case of Henry Wilson et al., Libelants, vs. Steamship "Newport" et al., Respondents, Pacific Mail Steamship Company, a corporation, Claimant; Pacific Steamship Company, a corporation, Cross-Libelant, vs. Henry Wilson et al., Cross-Libelants, as the same now remain on file and of record in this office, and as called for in praecipe for apostles on appeal on file herein, to-wit:

All those papers, documents and data required by Subdivision 1 of Sec. 1 of Rule IV of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit; all the pleadings, together with the exhibits annexed thereto in the above cause, all opinions of the court on questions arising in said cause; libel with annexed interrogatories; claim of Pacific Mail Steamship Company; stipulation re amendment to libel; amended libel;

answer of claimant and respondents to amended libel with annexed interrogatories; cross-libel of Pacific Mail Steamship Company; answer to cross-libel and answer to interrogatories propounded in answer and cross-libel; memorandum opinion dated September 10, 1924; interlocutory decree; final decree; court minutes of proceedings and orders in the above cause; all testimony, depositions and other proofs adduced in said cause, except the testimony given before the United States Commissioner upon the reference to ascertain and report damages, to-wit: reporter's transcript of testimony and proceedings on trial, deposition of John McKeown, Charles S. Semsen and Carl Rohberg; notice of appeal; assignment of errors; stipulation re record on appeal; stipulation re printing of the record on appeal; bond for costs on appeal and this praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to $35.30 and that said amount has been paid by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 18 day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-six, and

of our Independence the One Hundred and Fiftieth.

[Seal] CHAS. N. WILLIAMS,
Clerk of the District Court of the United States of America, in and for the Southern District of California.

By R. S. Zimmerman,
Deputy.

[Endorsed]: Printed Apostles on Appeal. Filed July 7, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

No. 4902

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Claimant and Cross-libelant, Steamship "NEWPORT," Her Engines, Boilers, Tackle, etc., J. McKINNON, Master of said Vessel, and PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, Owner of said Vessel, Respondents,

Appellants,

vs.

HENRY WILSON, F. A. WILSON, W. T. WILSON, LUCY W. KENDALL, A. KENDALL, MARY TROWBRIDGE, Administratrix of the Estate of A. J. PATTERSON, Deceased, JAMES PENNYCOCK, O. BERTELSEN, J. S. HUTCHINSON, E. C. HUTCHINSON, HELENA ALLEN, A. B. JOHNSON, KATIE M. JOHNSON, MARIETT JOHNSON, A. HANSEN, CLARA A. BUCHHOLZ, H. W. JACKSON, L. EVERDING, FRANK GRAHAM, MARGARET A. WILSON, Trustee, CARRIE E. WILSON, J. H. WILSON, MARGARET A. WILSON, WM. C. WILSON, JAMES GRAHAM, B. P. NELSON, KARL ROHBERG, CHARLES S. SEMSEN, JAMES HAYES, C. H. ANDERSON, HARRY WALTON, W. SARRIS, GUST ANDERSON, GUST SAARINEN, WM. R. REILLY, LOUIS NORLOFF, JOHN McDONALD, WILSON BANGAY, ROBERT WHITE, GEORGE DOLAN, JOHN LEWIS, SETT STRAND, Libelants,

HENRY WILSON, F. A. WILSON, W. T. WILSON, LUCY W. KENDALL, A. KENDALL, MARY TROWBRIDGE, JAMES PENNYCOCK, O. BERTELSEN, J. S. HUTCHINSON, E. C. HUTCHINSON, HELENA ALLEN, A. B. JOHNSON, KATIE M. JOHNSON, MARIETT JOHNSON, A. HANSEN, CLARA A. BUCHHOLZ, H. W. JACKSON, L. EVERDING, FRANK GRAHAM, MARGARET A. WILSON, Trustee, CARRIE E. WILSON, J. H. WILSON, MARGARET A. WILSON, WM. C. WILSON, JAMES GRAHAM, and B. P. NELSON, Cross-respondents,

Appellees.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1926, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the fourth day of October, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable FRANK H. RUDKIN, Circuit Judge, Honorable ADOLPHUS F. ST. SURE, District Judge.

[Title of Cause and Number.]

ORDER OF SUBMISSION.

ORDERED appeal in the above-entitled cause argued by Mr. Farnham P. Griffiths, proctor for the appellants, and by Mr. Frederick W. Dorr, proctor for the appellees, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1926, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the first day of November, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge, Honorable FRANK H. RUDKIN, Circuit Judge.

[Title of Cause and Number.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Honorable William H. Hunt and Frank H. Rudkin, Circuit Judges, and Adolphus F. St. Sure, District Judge, and good cause therefor appearing, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the Clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion filed therein.

[Title of Cause and Number.]

OPINION U. S. CIRCUIT COURT OF APPEALS.

Before HUNT and RUDKIN, Circuit Judges. and ST. SURE, District Judge:

HUNT, Circuit Judge:

In a calm sea on a clear bright morning in November, 1922, about twelve miles off the coast of California near Point Buchon, the steamship "Newport," 337 feet long, south bound, collided with the steam schooner "Svea," 170 feet long, bound north. The "Svea" interests libeled and the "Newport" interests cross-libeled. The "Newport" admitted fault but assumed that the "Svea" was also at fault. The "Svea" denied fault and set up that the collision was due solely to the fault of the "Newpart."

The District Court held that the collision was due to the negligence and fault of the "Newport" and that the plea of contributory negligence on the part of the "Svea" was not substantiated. Decree was entered against the "Newport" and her owners, Pacific Mail Steamship Company, and McKinnon, her master. The Steamship Company, claimant of the "Newport," and McKinnon, her master, appeal, contending that the decree should be based upon mutual fault and that the captain of the "Newport" should be exonerated.

The vessels approached from converging courses and were in sight of each other from the time they

were about eight miles apart. The crossing courses were such that the "Newport" held the "Svea" on her right side about three points off her starboard bow. The "Svea" had the "Newport" about three points off her port bow. There was no change of bearings from the time the vessels saw one another. The full speed of the "Newport" was ten knots, and that of the "Svea" seven and a half knots. The collision was at about right angles, the stem of the "Newport" striking the "Svea" amidships on the port side. Both ships were badly damaged.

It is admitted that there was plain fault on the part of the "Newport," the burdened ship. (Article 19, International Rules, 26 Stat. 327). Her master left the bridge and went to the lavatory before he saw the "Svea." The third officer remained in charge. Just before the collision the master heard the whistle, and looking through a port-hole, saw the "Svea." He went at once to the bridge, found the engines full speed astern, but was too late to do anything to avert the collision.

When the ships were about three miles apart with unchanged bearings, the mate of the "Svea" remarked to the captain, "I wonder what she is going to do." The captain replied: "I think he knows the rules of the road," and kept his course and speed. After the "Svea" had gone another mile and the ships were about two miles apart, with unchanged bearings, the master of the "Svea" blew one whistle which called for passing port to port. Although the whistle could have been heard

two or more miles away, the "Newport" made no response. The mate of the "Svea," using his glasses, saw no one on the bridge of the "Newport" and so reported to the master. The ships proceeded on their courses with unaltered speed until they were a little over a mile apart. The captain of the "Svea" then gave a danger signal of four blasts and kept his course and speed. No response came from the "Newport." The ships were approaching closer and closer, the bearings remaining unchanged. As the vessels proceeded to a point about three-eighths of a mile apart, the captain of the "Svea," seeing no activity on the bridge of the "Newport," blew a second danger signal. Still no reply from the "Newport," and still the ships proceeded without changing their courses and speeds. Immediately before the collision the mate of the "Svea" sung out, "Hard aport." The master testified that he did not countermand that order because the ships were not far apart and believing that collision was then inevitable, by following the order the "Svea" would strike in a straight, instead of a slanting way. When asked whether at the time of the giving of the order to hard aport there was any chance to avoid the collision, he replied, "No, not on my side." His testimony was that when he blew the second danger signal and the ships were coming close together, there was plenty of time for the "Newport" to clear the "Svea"; that when he realized that the "Newport" was not going to do anything, the ships were only about a length apart; that if he had then reversed his en-

gines he would have rammed into the "Newport" amidships; that after he blew his last danger signal he considered whether or not he should stop the "Svea" or back, but that he decided to go ahead, beleiving the "Newport" would change and knowing that the "Svea" had the right of way; that if he had stopped or slackened speed or reversed in an effort to avoid collision and the "Newport" at the same time had ported her helm, there would have been a collision. On cross-examination he said that when the ships were over a quarter of a mile apart he concluded *that he acted* there would be some mistake and that it was best to keep his course and speed; that he did not know what the "Newport" was going to do; that he doubted what she was going to do; that he knew what the duty of the "Newport" was and that there was a chance for her to go clear.

While the argument that the "Svea" as the holding on vessel, was under a primary duty to keep her course and speed (Article XXI), and that it was the duty of the "Newport" to keep out of her way, is sound as far as it is applicable, nevertheless, as we held in the West Hartland Case, 2 F. (2) 834, the duty imposed upon the "Svea" did not relieve her of the responsibility of deciding if and when it was necessary to depart from the rule in order to avoid immediate danger. Like many other rules, it is to be observed having due regard to the dangers of the situation and "to any special circumstance which may arise in any particular case rendering any departure from them necessary to avoid

immediate danger." (The Sunnyside, 91 U. S. 208; Art. XXVII, Gen. Prudential Rules.)

In The Delaware, 161 U. S. 459, the Court held that the preferred steamer would not be held in fault for maintaining her course and speed so long as it is possible to avoid her by porting; at least, in the absence of some indication that she is about to fail in her duty.

In The New York, 175 U. S. 187, where a like view was expressed, the case arose under the old rules which required both vessels to slacken speed and reverse if necessary to avoid collision, but it is none the less pertinent as to the general duty to adopt proper precaution to prevent collision.

In The Devonian, 110 Fed. 588, Judge Lowell said that the duty of the privileged vessel is to hold her course and of the burdened vessel to keep off that course, but that the privileged ship should constantly observe the burdened one in order to note whether the latter fails in her duty, and that when the failure of the burdened vessel becomes apparent, the privileged vessel must change her course as prudence demands.

The principal upon which the cases cited rest must control. The mate of the "Svea" saw no one on the bridge of the "Newport"; the captain and the mate were concerned for they knew that if the courses were kept collision was inevitable. When the ships were two miles apart the situation "did not look very good" to the captain of the "Svea"; a signal of one blast at two miles was not answered. A danger signal at one mile and a second danger

signal at three-eighths of a mile were unanswered, and never any change in the course of the "Newport."

The fact that the "Newport" failed to manoeuver immediately after the last signal from the "Svea," when considered with the immediately antecedent facts and circumstances as already outlined, made it distinctly apparent, we think, that she intended to persist in her course and thus made the danger of collision manifest. It therefore became the duty of the "Svea" to yield adherence to the primary right to hold her course and speed, and to do what she could to avoid disaster. Mariners of long experience testified that in their judgment the conduct of the "Newport" clearly indicated that she did not intend to change her course and that the "Svea" should have been stopped when the "Newport" was from three-eighths to a half a mile away.

It is contended that the decree holding the master of the "Newport" personally liable is erroneous. Accept it that the evidence excuses the master from personal negligence and the question is, should he be held responsible for the negligence of his subordinate officer, the mate, whom he left in charge when he went to the lavatory.

The captain testified that when he went to the bridge the excuse given by the mate for not avoiding the "Svea" was that he did not see her. The captain was then asked whether or not he had given instructions to his officers about standing watch on the bridge, to which he replied that at the time of

the collision the third officer was keeping his first watch on the ship; that he had shipped the day before and was making his first voyage.

In Wilson vs. The Belvedere, 30 Fed. Cas. 106, the Court, in referring to the duties of a master, said: "Masters often attempt to fix the sole responsibility on mates to screen themselves, who, of all others, should constantly exercise the most care and marked attention. If their engagements in other duties, or their avocations throw on the mates the executive duties, they being (though approved by the owners) selected by the masters and their deputies, the master must share the responsibility when casualties occur." Nicholson et al. vs. Mouncey et al., 15 East. 384, decided in 1812, distinguished between the liability of a captain of a ship of war and the captain of a merchant ship. Lord Ellenborough pointed out that the captain of a ship of war had no power to appoint the officers and crew on board and that the captain himself was not a volunteer but was obliged to serve and to take the persons whom he found on board and make the best of them, whereas the owner or master of a merchant ship is answerable for those whom he employs for injuries done by them to others within the scope of their employment.

Spencer on Collisions, section 182, writes that the party injured by collision may not only look to the vessel inflicting damages to the extent of its actual value, and to its owners to the extent of their interests, but to the master, and that the master is not only responsible for his own conduct, but also

for the conduct of his crew. In Sherman and Redfield on Negligence, 6th Ed. 246, it is said that under the rules peculiar to mercantile law the master of a private ship is responsible to third persons for his own negligence to the fullest extent and for the negligence of all employed on board to the same extent as if he were the ultimate principal. Marsden on Collisions at Sea, cites Denison vs. Seymour, 9 Wend. 9, in support of the text that a master has been held liable for the negligent and wrongful acts of his crew as well as for his own act. In the case referred to the Court reasoned that a captain of a merchant ship is not bound to engage in the service, but if he does he takes the position with the responsibility incident to his employment, and that, inasmuch as he appoints the mates, he is generally responsible for their negligence.

Kennedy vs. Ryall, 67 N. Y. 379, directly presented the question how far a master of a ship is answerable for damages arising by reason of the negligence of those employed under him. The defendant was in command of a steamship at quarantine which the deputy health officer ordered to be fumigated. By order of the health officer the steward cleared the passengers from the steerage and certain utensils containing poison were placed in the steerage for purposes of fumigation. Directions were given by the health officer as to the time the steerage should remain closed and as to the removal of the utensils. A drinking cup was not removed and the plaintiff's intestate, a child, who had been ordered by the steward to return to the

steerage, drank some of the poison an ddied as a result. The Court held that the steward, so far as he attended to the removal of the poison and the reinstatement of the steerage, was apparently acting within the general scope of his duty, and it was assumed that he did act with the approval of his superior officers. It was said that to all intents and purposes the steward became a servant of the master of the ship, acting for him and on his behalf; "That officer," said the Court, "was in command of the vessel and it was under his control and subject to his general management and direction—at least until the completion of the voyage and it was safely in port. By a rule peculiar to the mercantile law the master is liable for the negligent acts of the employee while engaged under his authority to the same extent as if he were the ultimate principal, who is ordinarily bound to respond in damages for such negligence." The master was held liable for the act of the chief steward in not removing the cup and poison which were the cause of the death of the child.

Story on Agency, sec. 315, wrote that the policy of the maritime law has "indissolubly connected" the personal responsibility of the master with that of all the other persons on board who are under his command and are subjected to his authority. He put the foundation of that liability upon the rule established by early primary authorities that in maritime law the master is treated not merely as an agent in his own behalf as well as in behalf of the owner, but as, in a way, a subrogated prin-

cipal and qualified owner having authority for the time being. Story gives as an additional reason for putting responsibility upon the master for his officers and crew, that the master, by reason of the responsibility, is induced to exercise superior watchfulness over the acts and conduct of his subordinates.

Judge Addison Brown in The City of New York, 25 Fed. 149, held the same way, saying: "In modern maritime law so far as I can discover the liability for injuries through negligence is confined to the owners of the ship and to the master, who is responsible for all his subordinates that are appointed by him and are under his control; and that is the general rule in English and American law." (Kay on Shipmasters and Seamen, Vol. II, p. 1153.)

Counsel for the master of the "Newport" cite The Rebecca, 20 Fed. Cas. No. 11,619, decided in 1831. Judge Ware there referred to the fact that in early maritime jurisprudence the master was usually part owner of the ship and was not dealt with as an agent of the owner, whereas under modern conditions the authority of the master is more that of a stipendiary agent or praepositus of the owner, and held that under the altered relationship there should be a reversal of ancient customs as to the master's liability. There is force in the reasoning but it does not seem to have been sufficiently cogent to persuade text-writers and courts to break the more ancient and stricter doctrine of the maritime law.

Our conclusion is that upon the authority of the cases cited the master was properly held liable for the inexcusable negligence of the third officer.

The decree must be reversed with directions to enter a decree based upon mutual fault, with the usual apportionment of damages of cross-liability in admiralty. Costs in this court and in the court below to be equally divided.

Reversed.

[Endorsed]: Opinion. Filed Nov. 1, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4902.

PACIFIC MAIL STEAMSHIP COMPANY, a Corporation, et al.,

Appellants,

vs.

HENRY WILSON et al.,

Appellees.

DECREE.

Appeal from the District Court of the United States for the Southern District of California, Southern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United

States for the Southern District of California, Southern Division, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed, and that this cause be, and hereby is remanded to the said District Court with directions to enter a decree based upon mutual fault, costs in this court and in the said District Court to be equally divided.

[Endorsed]: Decree. Filed and entered November 1, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

[Title of Cause and Number.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify that the foregoing two hundred and fifty (250) pages, numbered from and including 1 to and including 250, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled cause in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellees, and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 15th day of November, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

No. 146

HENRY WILSON, F. A. WILSON, W. T. WILSON, et al., Petitioners,

vs.

PACIFIC MAIL STEAMSHIP COMPANY, STEAMSHIP "NEWPORT," HER ENGINES, etc., J. McKINNON, Master, etc.

ORDER ALLOWING CERTIORARI—Filed January 10, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1927

No. 173

PACIFIC MAIL STEAMSHIP COMPANY, Claimant of the STEAMSHIP "NEWPORT," HER ENGINES, etc., et al., Petitioners,

vs.

HENRY WILSON, F. A. WILSON, W. T. WILSON, et al.

ORDER ALLOWING CERTIORARI—Filed March 14, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.